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22 Exterminating Co., Inc.), and Rollins, Inc.

23 **UNITED STATES DISTRICT COURT**  
24 **NORTHERN DISTRICT OF CALIFORNIA**

25 RONALD KRZYZANOWSKI AND  
26 ILEANA KRZYZANOWSKI, on behalf of  
themselves and all others similarly situated,

27 Plaintiffs,

28 vs.

Case No. 3:07-cv-05362-SBA (EDL)

**MOTION TO COMPEL BY  
DEFENDANTS ORKIN, INC. (f/k/a  
ORKIN EXTERMINATING CO.,  
INC.) AND ROLLINS, INC.**

1 ORKIN EXTERMINATING COMPANY,  
2 INC.; ROLLINS, INC.,

3 Defendants.  
4

**NOTICED FOR HEARING ON  
SEPTEMBER 30, 2008 AT 9:00 A.M.**

5  
6  
7 PLEASE TAKE NOTICE that Defendants' Motion to Compel will be heard on  
8 September 30, 2008 at 9:00 a.m., Courtroom E, 15<sup>th</sup> Floor, United States District Court,  
9 450 Golden Gate Avenue, San Francisco, California, 94102.

10 Pursuant to Federal Rules of Civil Procedure 26(b)(1) and 37, Civil L.R. 37, and  
11 this Court's June 12, 2008 Order Re: Discovery Procedures, Defendants Orkin, Inc.  
12 (f/k/a Orkin Exterminating Co., Inc.) (hereinafter "Orkin") and Rollins, Inc. (hereinafter  
13 "Rollins") (collectively referred to as "Defendants"), by and through their counsel,  
14 hereby move to compel Plaintiffs Ronald and Ileana Krzyzanowski (hereinafter  
15 "Plaintiffs") to respond to several discovery requests that were served on April 18, 2008  
16 and June 13, 2008, and which have been the subject of several meet and confer sessions  
17 (see Declaration of Theodore R. Scarborough, attached hereto as Ex. A). This motion is  
18 timely filed pursuant to Civil Local Rule 26-2.  
19

20 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL**

21 **I. INTRODUCTION**

22 Orkin treated Plaintiffs' property nearly ten years ago in 1999 for subterranean  
23 termites. Under the terms of the contract, Orkin agreed to retreat the property free of  
24 charge if the termites returned during the existence of the contract. After one year of  
25 service, Plaintiffs declined to renew the contract. The termites returned in the fall of  
26 2002. Plaintiffs again called Orkin. This time, they purchased a directed liquid and bait  
27 retreatment agreement. After several treatments in 2002 and 2003, Orkin successfully  
28 controlled the termites and Plaintiffs have not had an infestation since June 2003.

1 Nevertheless, Plaintiffs decided to file this action after seeing an advertisement  
2 soliciting potential plaintiffs for lawsuits against termite service companies.

3 The complaint is a hodgepodge of general allegations with few specifics. It  
4 makes a number of generic claims of wrongdoing that could be aimed at any pest  
5 control company, but which are all untrue as to Orkin: alleged failure to properly treat  
6 for termites, failure to inspect properties, failure to make alterations to properties  
7 necessary to make termiticides effective, failure to apply the proper amount of  
8 termiticide, failure to inform consumers that termiticides would wear off over time,  
9 illegally raising renewal fees, false advertising, failure to conduct quality control  
10 checks, concealing past failures, using deceptive contracts, concealing termite  
11 infestations, etc. Such allegations provide little insight to Orkin as to the actual facts at  
12 issue in this litigation. Plaintiffs' Rule 26 disclosures provided no more additional  
13 information, simply listing the names of the named plaintiffs and several vague  
14 categories of documents (e.g., "policies or procedures of defendant that applied to  
15 California customers").

16 In March 2008, Orkin served discovery designed largely to determine the facts  
17 surrounding Orkin's treatment of Plaintiffs' property and the specific policies,  
18 procedures, and conduct Plaintiffs are challenging. As set forth below, Plaintiffs'  
19 responses are deficient. In particular, they rely on several stock answers that are clearly  
20 inappropriate and inadequate:

21 First, in response to several interrogatories, Plaintiffs refer Defendants to the  
22 allegations of the complaint, but that is clearly improper. (See, e.g., Responses to  
23 Interrogatories 3, 10, 11, 13, 16); see also *Pacific Lumber Co. v. Nat'l Union Fire Ins.*  
24 *Co. of Pittsburgh*, No. C 02-4799 SBA(JL), 2005 WL 318811, at \*4 (N.D. Cal. Jan. 5,  
25 2005) ("It is well established that an answer to an interrogatory must be responsive to  
26 the question. It should be complete in itself and should not refer to the pleadings, or to  
27 depositions or other documents, or to other interrogatories, at least where such  
28

1 references make it impossible to determine whether an adequate answer has been given  
2 without an elaborate comparison of answers.”).

3 Second, without identifying any specific documents, Plaintiffs claim that Orkin  
4 has the documents they need to answer certain inquiries. That response is inadequate  
5 and simply not true. In May 2008, Orkin produced nearly 8,000 pages of documents.<sup>1</sup>  
6 In addition, their lead counsel styles himself as an expert in termite litigation, having  
7 sued Orkin and other pest control companies in numerous lawsuits. Orkin produced  
8 thousands of pages of documents to Plaintiffs’ lead counsel in at least four of those  
9 lawsuits and has agreed to permit him to use those documents in this litigation.<sup>2</sup> Thus,  
10 Plaintiffs cannot pretend they are novices to this litigation without any documents or  
11 information. At a minimum, Plaintiffs must identify any documents from these  
12 productions that support their claims, particularly given the vague and sweeping  
13 allegations of the complaint. (See, e.g., Responses to Interrogatories 1, 8, 11, 12, 13,  
14 14, 15, 16; Document Request Nos. 9, 10, 11, 14, 19, 20.)

15 Third, Plaintiffs claim that certain requests are premature even though Plaintiffs  
16 apparently already have at least some documents or information responsive to the  
17 requests. (See, e.g., Responses to Interrogatories 3, 5, 9, 10, 11, 12, 13, 14, 15, 16;  
18 Document Request Nos. 7, 9, 10, 11, 19, 20.) While Plaintiffs have the right and  
19 obligation to supplement their responses later, they are obligated and should be  
20 compelled to produce information and documents that they now have.

21 The documents and information requested by Orkin are specific to the factual  
22 allegations underlying Plaintiffs’ complaint regarding the services provided to Plaintiffs

23  
24 <sup>1</sup> On May 9 and 12, 2008, Orkin produced documents Bates numbered as follows: Focus 1-3540; K-  
LP 1-2733; K-SA 1-274; K-TB 1-268; TTEM 1-979.

25 <sup>2</sup> Orkin has produced general policy and practice documents in connection with *McCord Properties,*  
26 *Ltd., et al. v. Orkin Exterminating Co., Inc.*, No. 2002-4981 (Jefferson County); *Junkin v. Orkin*  
27 *Exterminating Co., Inc.*, No. CV-2001-1038 (Tuscaloosa County); *Knopf v. Orkin Exterminating Co.,*  
28 *Inc.*, No. CV04-2693 (Jefferson County); and *Hanson v. Orkin Exterminating Co., Inc.*, No. CV01-06  
(Tallapoosa County).

1 and cannot be more easily obtained from any other source (see Fed. R. Civ. P.  
2 26(b)(2)(C)(i)). Orkin has not yet had the opportunity to obtain the information sought  
3 by the discovery requests in dispute in this motion (see Fed. R. Civ. P. 26(b)(2)(C)(ii)),  
4 and the documents requested are extremely important: they go to the heart of Plaintiffs'  
5 allegations and the propriety of class certification (see Fed. R. Civ. P. 26(b)(2)(C)(iii)).  
6 This is a large state-wide putative class action in which tens of thousands of customers  
7 and contracts are at issue, and Orkin is thus entitled to this discovery, none of which  
8 Plaintiffs have alleged to be unreasonably cumulative or unduly burdensome in light of  
9 the needs of the case, the benefit of the information, the amount in controversy, and the  
10 importance of the issues at stake (*id.*).

11 Plaintiffs should be compelled to provide proper discovery responses. At best,  
12 Plaintiffs have failed to provide adequate responses. At worst – and to the extent that  
13 Plaintiffs cannot provide the requested information – they do not appear to have  
14 conducted a proper investigation into the allegations of the complaint before filing.  
15 Rather, their complaint is a transparent attempt to conduct a “fishing expedition” of  
16 Orkin’s documents in the hopes of finding a sufficient basis for their complaint after  
17 filing.

## 18 **II. FIRST SET OF DISCOVERY**

19 Defendants served Defendants’ First Set of Interrogatories and First Set of  
20 Requests for Production of Documents on March 7, 2008. Plaintiffs served their  
21 responses thereto on April 18, 2008 (Exs. B and C hereto), but failed to fulfill their  
22 response obligations under the Federal Rules of Civil Procedure and the Local Rules of  
23 this District governing discovery. To be sure, Plaintiffs agreed during the meet and  
24 confer sessions (and as confirmed in their letter of July 21, 2008, attached hereto as Ex.  
25 F) to supplement their responses, but to date have not yet done so. In light of the  
26 upcoming discovery cut-off this fall, Defendants could not wait any longer.

1           **A. Interrogatories (Nos. 3, 5, 7, 8, 10, 11, 13, 16)**

2           **INTERROGATORY NO. 3**

3           **Interrogatory:** Identify all facts that support or relate to the following class  
4 action allegations, with respect to each putative class defined in the complaint or  
5 any subsequent amended complaint:

6           \* \* \*

7                   (b)<sup>3</sup> common questions of law and fact predominate over any individual  
8 questions;

9                   (c) claims or defenses of the representative parties are typical of the  
10 claims or defenses of the class;

11           \* \* \*

12           **Answer:** Plaintiffs object to this interrogatory as premature to the extent that it  
13 calls for information that is not readily available to the Plaintiffs and information  
14 that will need to be provided by Defendants through the course of discovery.  
15 Plaintiffs further object that this interrogatory calls for a legal conclusion and  
16 disclosure of attorney-client privilege and/or attorney work-product.

17           Without waiving said objections, *Plaintiffs direct Defendants to Plaintiffs'*  
18 *Complaint generally which states as follows* [emphasis supplied]:

19           \* \* \*

20                   b. Upon information and belief, the common questions of law and fact  
21 applicable to all class members are believed to include

22                           (a) Defendants [sic] failure to perform the services necessary to  
23 make the necessary recommendations for alterations to structures or  
24 foundation areas so as to make application of a complete chemical  
25 barrier an effective preventative or control measure against termites;

26                           (b) Defendants [sic] failure to make complete, proper and  
27 adequate initial inspections or annual re-inspections as required by  
28 law and by contract of the California properties under contract;

                         (c) Defendants [sic] failure to apply a full label rate application of  
                          termiticide chemicals in accordance with labels and good practice;

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<sup>3</sup> Orkin is not moving to compel further responses to subparagraphs (a), (d), or (e).

1 (d) Defendants [sic] failure to apply and maintain a proper termite  
2 chemical barrier as required by contract and law;

3 (e) Defendants [sic] failure to maintain chemical barriers which  
4 were applied after they were known to have probably become  
ineffective;

5 (f) Defendants [sic] failure to perform adequate treatments in  
6 accordance with label and industry standards;

7 (g) Defendants [sic] failure to inform consumers of the failure of  
8 protective measures to induce additional payments, premiums, and  
alternative control or prevention services;

9 (h) Defendants [sic] illegal raising annual renewal fees;

10 (i) Defendants [sic] failure to apply complete applications of  
11 chemical to all critical areas when providing chemical barrier  
12 protection in a stand-alone service or in combination with a baiting  
system;

13 (j) Defendants [sic] failure to disclose that its baiting system did  
14 not act as a "bait" or lure for termites;

15 (k) Defendants [sic] false advertising and selling of prevention  
and control services as baits without providing a bait for termites;

16 (l) Defendants [sic] failure to refund premiums and charges to  
17 customers after it knew or should have known that its prior service  
18 was no longer reasonably expected to be delivering a complete  
barrier to termite infestation;

19 (m) Defendants [sic] failure to conduct quality control checks that  
20 were reasonably designed to fix prior faulty service;

21 (n) Defendants actively concealed past service failures by making  
22 incomplete remedial treatments at the direction of Rollins and Orkin  
executives and high level managers;

23 (o) Defendants continued to accept premiums from customers for  
24 "Lifetime" protection contracts when its executives and high level  
25 managers were disclosing to industry insiders that it could not fulfill  
said promises;

26 (p) Defendants [i]nserted limitations of remedies and damages  
27 clauses into contracts to conceal its wrongdoing;

28 (q) Defendant made deceptive claims about its ability to identify  
"new" termite damage;

(r) Defendants engaged in deceptive practices of killing known or suspected live termite infestations to create reasons to deny claims for termite damages occurring during the course of termite treatments;

(s) Defendant intentionally deceived customers about the quality and thoroughness of remedial termite chemical applications;

(t) Defendants switched customers to different services to conceal past wrongdoing;

(u) Defendants [sic] failure to correct false statements about the incidence of termite infestation;

(v) Defendants [sic] failure to refund monies it has held without providing the promised services;

(w) Defendants discouraged property owners from obtaining services from other vendors by concealing its failures of performance;

(x) Defendants collected money from customers without disclosing any of the above or performing the services described above; and,

(y) Defendants [sic] failure to make the necessary inspections to discover the extent of termite damage and termite treatment deficiencies.

c. Upon information and belief, it is believed, based on Defendants' use of standardized form contracts, standardized marketing materials, legal requirements under California law, and Defendants' standardized policies and procedures, that the above-listed common questions of law and fact relate to all potential class members and likewise form the bases for any claims the class may have. Prior to completion of discovery, Defendants are in the best position to identify the evidence supporting Plaintiffs' allegations. *Information obtained by certain counsel in other cases supports Plaintiffs' allegations* [emphasis supplied], but discovery in this case is in its infancy. Plaintiffs will provide any separately obtained evidence as part of the discovery process.

\* \* \*

**Grounds to Compel:** This response is insufficient because it simply regurgitates the allegations of the complaint and fails to provide any facts. Plaintiffs have refused to identify the "standardized form contracts," "standardized marketing materials," "legal

requirements under California law,” or “standardized policies and procedures” that they allege will provide a basis for class certification (see also Response to Requests for Production of Documents 9 and 10). Yet such alleged contracts, marketing materials, and policies and practices are central to the claims asserted in this action (see Fed. R. Civ. P. 26(b)(2)(C)(iii)). Plaintiffs cannot evade their obligations to respond to this interrogatory merely by referring to the allegations of the complaint. To be sure, Plaintiffs contend that Orkin has in its possession documents and information that allegedly support these allegations, but that does not relieve them of their duty to identify the alleged policies and practices at issue and to provide the information that they currently possess regarding such allegations. Plaintiffs are required to have a good faith basis for making such allegations and they should be compelled to disclose the documents and information giving them such basis. Moreover, Plaintiffs’ statement that “information obtained by certain counsel in other cases supports Plaintiffs’ allegations” also provides no information to Defendants as to the facts upon which Plaintiffs’ allegations are based. Plaintiffs must at the very least identify those documents from the other cases. Defendants therefore move this Court to compel Plaintiffs to provide a complete response to this interrogatory.

#### **INTERROGATORY NO. 5**

**Interrogatory:** Identify all damages that you allegedly incurred or that you seek to recover in this action as a result of the matters described in your complaint or any subsequent amended complaint. For each category or type of damages, provide the basis for such damages and the amount of such damages.

**Answer:** Plaintiffs object to this interrogatory to the extent that it calls for information protected by the work product doctrine and on the grounds that the interrogatory is vague, ambiguous and a meaningful response to this interrogatory is not possible at this time as Plaintiffs have not completed their investigation or discovery. Further, at this time Plaintiffs require information currently only in the possession of the Defendants in order to make a reasonable damages calculation.

Without waiving said objections, *Plaintiffs refer Defendants to the allegations contained in the Complaint* [emphasis supplied] as the basis for any damages

1 including but not limited to damages for breach of contract, money paid and lost  
2 for services either never rendered or incompletely rendered, the cost to apply a  
3 full barrier to protect from termites in accordance with California State Law and  
4 label requirements, as well as any incidental, consequential, statutory and  
5 punitive damages that may be applicable. Plaintiffs also seek equitable relief.

6 **Grounds to Compel:** In response to this request for basic damages information,  
7 Plaintiffs simply reiterated the allegations of the complaint and did not provide any  
8 additional information as to the amount of damages sought in this lawsuit. Merely  
9 referring Orkin to the complaint is clearly insufficient. See Pacific Lumber, 2005 WL  
10 318811, at \*4. Defendants are entitled to discovery regarding the damages sought by  
11 Plaintiffs and the basis for such damages calculations. See Fed. R. Civ. P.  
12 26(a)(1)(A)(iii). Moreover, at his deposition, Mr. Krzyzanowski claimed that part of  
13 the damages sought in this case are damages for missed work, which were not identified  
14 in the interrogatory response. Defendants now move this Court to compel Plaintiffs to  
15 provide a complete response to this interrogatory. (See also Ex. E hereto.)

16 **INTERROGATORY NO. 7**

17 **Interrogatory:** Please identify each time you or any of your agents observed  
18 evidence of active termite infestation or possible termite infestation. Your  
19 answer should include the date of the observation and describe in detail what the  
20 person observed and any actions that were taken in response to said  
21 observation(s).

22 **Answer:** Plaintiffs object to this interrogatory as it seeks information that is  
23 neither relevant nor reasonably calculated to lead to the discovery of admissible  
24 evidence. Plaintiffs object to this interrogatory on the grounds that the  
25 interrogatory is overly broad, vague, ambiguous and a meaningful response to  
26 this interrogatory is not possible as it uses undefined terms including “active  
27 infestation,” “possible infestation,” and “observation.”

28 Subject to, and without waiving said objections, Plaintiffs state that they  
discovered possible termite infestation at the time immediately preceding buying  
termite prevention services from the Defendants and at various times since  
contracting with Defendants, they have been informed of termite activity and  
possible infestations.

1       **Grounds to Compel:** This response is not sufficient to put Orkin on notice as to  
2 when and where the alleged termite infestations occurred. Such facts are central to  
3 their claim that Orkin allegedly failed to provide effective termite services and are  
4 uniquely in the control of Plaintiffs (*see* Fed. R. Civ. P. 26(b)(2)(C)(iii)). Defendants  
5 now move this Court to compel Plaintiffs to provide a complete response to this  
6 interrogatory.  
7

8  
9       **INTERROGATORY NO. 8**

10       **Interrogatory:** Please identify each pest control employee (including Orkin  
11 employees), home inspector, contractor, engineer, appraiser, lawyer, consultant,  
12 or expert who visited the property that is the subject of this suit, identifying the  
person who visited the property, the date of the visit, and the purpose of their  
inspection(s).

13       **Answer:** Plaintiffs object to this interrogatory as it seeks information that is  
14 neither relevant nor reasonably calculated to lead to the discovery of admissible  
15 evidence. Plaintiffs further object to this interrogatory to the extent that it calls  
16 for information protected by the attorney-client privilege or the work product  
17 doctrine and on the grounds that the interrogatory is overly broad, vague,  
ambiguous and a meaningful response to this interrogatory is not possible as it  
uses undefined terms.

18       Without waiving said objections, Plaintiffs' attorneys visited Plaintiffs' home in  
19 order to assess the potential claims Plaintiffs may have against Defendants.  
20 Defendants are in the best position to know which of their employees visited  
Plaintiffs' property, when and for what purpose.

21       **Grounds to Compel:** Other than identifying Plaintiffs' counsel, Plaintiffs have  
22 identified no other persons who visited the property for purposes of an inspection, even  
23 though Mr. Krzyzanowski stated at his deposition that such inspections (including  
24 inspections by pest control companies other than Orkin) had been conducted. Orkin is  
25 entitled to such basic information in order to defend this case to confirm whether there  
26 have been any other termite treatments or inspections that would bear on the quality of  
27 Orkin's work (*see* Fed. R. Civ. P. 26(b)(2)(C)(iii)). Plaintiffs are uniquely in control of  
28

1 this information (see Fed. R. Civ. P. 26(b)(2)(C)(i)). Defendants now move this Court  
 2 to compel Plaintiffs to provide a complete response to this interrogatory. (See also Ex.  
 3 E hereto.)  
 4

#### 5 **INTERROGATORY NO. 10**

6 **Interrogatory:** Please set forth in detail the factual basis for Plaintiff's breach of  
 7 contract claim, including, but not limited to (i) what actions constitute the breach,  
 8 (ii) when the breach occurred, (iii) whether and how Plaintiff was injured by each  
 9 such alleged breach, (iv) whether and how Plaintiff mitigated his damages, (v)  
 10 whether and how Plaintiff fulfilled his or her own contractual obligations.

11 **Answer:** Plaintiffs object to this interrogatory on the grounds that the  
 12 interrogatory is overly broad, vague, ambiguous, and a meaningful response to  
 13 this interrogatory is not possible as it uses undefined terms. Plaintiffs further  
 14 object in that this interrogatory calls for information that is not readily available  
 15 to the Plaintiffs at this time and information that will need to be provided by  
 16 Defendants through the course of discovery. Plaintiffs further object in that this  
 17 interrogatory calls for information that has been alleged in the complaint and is  
 18 therefore redundant and burdensome.

19 Subject to, and without waiving said objections, Plaintiffs contend, *as detailed in*  
 20 *the Complaint* [emphasis supplied], that Defendants knowingly failed to provide  
 21 the necessary services as they were obligated to under the terms of the contract,  
 22 laws and legal duties and that are designed to prevent termite infestations through  
 23 use of professional expertise by a regulated service providers [sic]. Plaintiffs'  
 24 believe these services should include application and maintenance of a complete  
 25 chemical barrier in accordance with law and professional duties and use of  
 26 products that fulfill their promises (e.g., a "bait" should lure termites), all in  
 27 compliance with the minimum standards. Plaintiffs lack the expertise and  
 28 knowledge needed to provide proper service and rely on experts and attorneys  
 who are experienced in the field. The breach continues to occur every day that  
 these services were not provided by the Defendants. As a result of this breach,  
 Plaintiffs are entitled to, *inter alia*, the return of the contract amount paid and the  
 cost to apply a full and effective chemical barrier to protect the property from  
 termites. Plaintiffs believe that they preformed all duties required of them to  
 eliminate conditions conducive to termite infestation when and as instructed by  
 Defendants. As discovery is in its infancy, Plaintiffs will provide Defendants  
 further information at the appropriate time.

26 **Grounds to Compel:** Again, this response is entirely defective because  
 27 Plaintiffs seek to evade their obligations by relying primarily on the allegations of the  
 28 complaint. For example, Plaintiffs claim that, according to the complaint, Orkin

1 “knowingly failed to provide the necessary services as they were obligated to under the  
 2 terms of the contract, laws and legal duties and that are designed to prevent termite  
 3 infestations through use of professional expertise by a regulated service provider.” This  
 4 answer does not fairly put Orkin on notice regarding the specific contractual obligations  
 5 it allegedly breached as to Plaintiffs and the putative class. Once again, Plaintiffs claim  
 6 that they will need to learn more through discovery but they had to have had a good  
 7 faith basis for making a breach of contract claim in the first place and they already have  
 8 the Orkin contracts at issue as well as thousands of pages of Orkin documents.  
 9 Defendants now move this Court to compel Plaintiffs to provide a complete response to  
 10 this interrogatory.  
 11  
 12

### 13 **INTERROGATORY NO. 11**

14 **Interrogatory:** Please describe in detail any Orkin policy or practice regarding  
 15 subterranean termite services, sales, treatments, retreatments, applications,  
 16 reapplications, inspections, or reinspections that you contend violate Orkin’s  
 17 contract, industry standards, or some other duty owed by Orkin to Plaintiff, and that  
 you intend to establish on a classwide basis.

18 **Answer:** Plaintiffs object to this interrogatory on the grounds that the  
 19 interrogatory is overly broad, vague, and ambiguous. A meaningful response to  
 20 this interrogatory is not possible as it uses undefined terms and it calls for  
 information that is not readily available to the Plaintiffs at this time and will need  
 to be provided by Defendants through the course of discovery.

21 Without waiving said objections, upon information and belief Plaintiffs contend,  
 22 *as detailed in the Complaint* [emphasis supplied], that Defendants knowingly  
 23 failed to provide the necessary services as they were obligated to under the terms  
 24 of the contract and in order to fulfill customers’ reasonable expectations of  
 protection from termite infestations. Plaintiffs further contend, *as detailed in the*  
 25 *Complaint* [emphasis supplied], that Defendants [sic] routine practice and policy  
 26 is to intentionally not provide services in accordance with label requirements and  
 California law. Defendant possesses the information necessary to support these  
 27 allegations. As discovery commences, Plaintiffs will provide Defendants  
 28 additional examples of Defendants’ documents and conduct which may be  
 responsive to this Interrogatory.

1       **Grounds to Compel:** Again, this response is insufficient because it simply  
2 regurgitates the allegations of the complaint and fails to provide any *facts*. Plaintiffs  
3 have refused to identify the policies or practices of Orkin that they allege violate law or  
4 industry standards (*see also* Response to Requests for Production of Documents 9 and  
5 10). Yet such alleged policies and practices are central to the claims asserted in this  
6 action (*see* Fed. R. Civ. P. 26(b)(2)(C)(iii)). Plaintiffs cannot evade their obligations to  
7 respond to this interrogatory merely by referring to the allegations of the complaint  
8 (*e.g.*, “as detailed in the complaint”). To be sure, Plaintiffs contend that Orkin has in its  
9 possession documents and information that allegedly support these allegations, but that  
10 does not relieve Plaintiffs of their duty to identify the alleged policies and practices at  
11 issue and to provide the information that they currently possess regarding such  
12 allegations. Plaintiffs are required to have a good faith basis for making such  
13 allegations and should be compelled to disclose it, and they already have thousands of  
14 pages of Defendants’ documents. Defendants now move this Court to compel Plaintiffs  
15 to provide a complete response to this interrogatory.  
16  
17  
18

19       **INTERROGATORY NO. 13**

20       **Interrogatory:** Please identify the factual basis for your contention that Orkin  
21 had a duty to perform a comprehensive retreatment of Plaintiff’s property after a  
22 certain period of time, even if there was no evidence of an infestation at the  
property.

23       **Answer:** Plaintiffs object to this interrogatory on the grounds that the  
24 interrogatory is overly broad, vague, and ambiguous. A meaningful response to  
25 this interrogatory is not possible as it uses undefined terms and it calls for  
26 information that is not readily available to the Plaintiffs at this time and will need  
27 to be provided by Defendants through the course of discovery. This Interrogatory  
28 is also unduly burdensome because Defendants already possess this information  
in their records.

Without waiving said objections, Plaintiffs contend, *as detailed in the Complaint* [emphasis supplied], that Defendants knowingly failed to provide the necessary services as they were obligated to under the terms of the contract, laws and legal duties and that are designed to prevent termite infestations through use of professional expertise by a regulated service providers. Plaintiffs' [sic] believe these services should include application and maintenance of a complete chemical barrier in accordance with law and professional duties and use of products that fulfill their promises (e.g., a "bait" should lure termites), all in compliance with the minimum standards. Plaintiffs lack the expertise and knowledge needed to provide proper service and rely on experts and attorneys who are experienced in the field. In order to perform their duties, Defendants would be required to perform a reapplication of chemicals after such time period that Defendants knew or should have known the previous applications of chemicals had worn off. Defendants, as experts in the field of termite protection, had a duty to use reasonable care in discharging their duties under the contract.

**Grounds to Compel:** This response is improper because, yet again, Plaintiffs seek to evade their obligations by relying primarily on the allegations of the complaint. But those are merely allegations, not facts, and are insufficiently precise to properly answer this interrogatory. For example, Plaintiffs claim that, according to the complaint, Orkin was obligated under unidentified "laws and legal duties" to perform unspecified "necessary services." Plaintiffs also make vague references to "professional duties" and "minimum standards." But this is all gibberish. This answer does not fairly put Orkin on notice regarding the specific duties it allegedly breached as to Plaintiffs and the putative class. Once again, Plaintiffs claim that they will need to learn more through discovery but they were required to have a good faith basis for making that allegation in the first place and they have already received thousands of pages of documents in this and other litigation. Plaintiffs must answer based on the information and documents that they currently have.

**INTERROGATORY NO. 16**

**Interrogatory:** Identify each allegedly common issue of law or fact that you intend to try on a classwide basis, *see* Fed. R. Civ. P. 23(a)(2), and identify the common evidence that you will use to prove the elements of each substantive

1 claim based on each such law or fact. If you do not already have the common  
2 evidence in your possession or under your control, identify the type of evidence  
you intend to use.

3 **Answer:** Plaintiffs object to this interrogatory on the grounds that the  
4 interrogatory is overly broad, vague, and ambiguous. A meaningful response to  
5 this interrogatory is not possible as it uses undefined terms and it calls for  
6 information that is not readily available to the Plaintiffs at this time and will need  
7 to be provided by Defendants through the course of discovery. This Interrogatory  
8 is also unduly burdensome because Defendants already possess this information  
in their records. Plaintiffs further object that this interrogatory calls for a legal  
conclusion and disclosure of attorney-client privilege and/or attorney work-  
product.

9 Subject to, and without waiving their objections, Plaintiffs will address what  
10 evidence to present at such a time when the required evidence is under their  
control and routine discovery, including depositions, has yielded potential  
11 evidence. Generally, Plaintiffs anticipate using Defendants' standardized  
12 contracts, standardized marketing materials, standardized training materials,  
internal records of pesticide use, evidence of Defendants' policies and  
13 procedures, evidence of label requirements for termiticide product use and any  
other materials obtained in discovery. In addition, Plaintiffs anticipate offering  
14 expert testimony on termite control methods and about the development of the  
state-of-the-art in termite control over time.

15  
16 **Grounds to Compel:** This interrogatory goes to the core issue that the Court  
17 must evaluate in deciding whether to certify a class: what are the allegedly common  
18 issues and what types of proof can be used to establish liability, injury, and damages on  
19 a classwide basis. While Plaintiffs certainly do not have to try the merits of their claims  
20 at the class certification stage of the proceedings, they must come forward with the  
21 types of evidence that they will use to establish the class claims. Once again, Plaintiffs  
22 repeat their mantra that the request is premature, that the Defendants have the relevant  
23 information, and that the answers may be found in a number of vaguely described  
24 documents. But Plaintiffs must do more. Based on the information and documents that  
25 they have available to them, they must provide the answers that they have now, subject  
26 to any later supplementation.  
27  
28

**B. Document Requests**

**1. Specific Deficiencies in Certain Document Request Responses  
(Nos. 1, 2, 4, 5, 6, 7, 9, 10, 11, 17)**

**REQUEST NO. 1**

**Request:** All documents – including but not limited to correspondence, notes, advertisements, brochures, or contracts – relating to or referring to any contract(s) or services provided thereunder (including the negotiation of any contracts) between either Plaintiffs and Orkin or Plaintiffs and any other pest control companies for treatment of termites or other insects for the property located at 33755 Weyland Court, Union City, California.

**Answer:** Plaintiffs incorporate each of the general objections above. Subject to and without waiver of the foregoing objections, Plaintiffs state all the service records and marketing materials in possession of Plaintiffs were identified in Plaintiffs' initial disclosures and constitutes all documents in Plaintiffs' possession at this time and that non-privileged responsive documents will be produced.

**Grounds to Compel:** Plaintiffs produced only one brochure in response to this request (KRZYZ 110-125). At his deposition, Mr. Krzyzanowski stated that he may have received another brochure prior to entering into his 1999 contract with Orkin. Plaintiffs have not produced any additional brochures, despite repeated requests for such documents. Defendants now move this Court to compel Plaintiffs to either produce any additional brochures or advertising materials (or any other responsive documents), or to state unequivocally that they do not have any additional responsive documents in their custody, possession, or control. (*See* also Ex. E hereto.)

**REQUEST NO. 2**

**Request:** All bills sent to Plaintiffs by Orkin for termite prevention or control services, and all documents showing proof of payment to Orkin for termite services rendered.

**Answer:** Plaintiffs incorporate each of the general objections above. Subject to and without waiver of the foregoing objections, Plaintiffs state all the service records and marketing materials in possession of Plaintiffs were identified in Plaintiffs' initial disclosures and constitutes all documents in Plaintiffs'

1 possession at this time and that non-privileged responsive documents will be  
2 produced.

3 **Grounds to Compel:** Plaintiffs have not produced any proofs of payment (*e.g.*,  
4 cancelled checks, bank statements, *etc.*) for services provided by Orkin to Plaintiffs.  
5 The amounts Plaintiffs claim they paid to Orkin are clearly relevant to their alleged  
6 damages. Defendants now move this Court to compel Plaintiffs to either produce any  
7 responsive documents, or to state unequivocally that they do not have any additional  
8 responsive documents in their custody, possession, or control.  
9

10 **REQUEST NO. 4**

11 **Request:** All documents relating or referring to any physical inspection of the  
12 property located at 33755 Weyland Court, Union City, California for any  
13 purpose.

14 **Answer:** Plaintiffs incorporate each of the general objections above. Subject to  
15 and without waiver of the foregoing objections, Plaintiffs state all the service  
16 records and marketing materials in possession of Plaintiffs were identified in  
17 Plaintiffs' initial disclosures and constitutes all documents in Plaintiffs'  
possession at this time and that non-privileged responsive documents will be  
produced.

18 **Grounds to Compel:** Although Plaintiffs produced some documents related to  
19 Orkin inspections of their property, there are apparently still others that have not been  
20 produced. Mr. Krzyzanowski testified at his deposition that a company called  
21 Termwright inspected the property and that other inspections took place as well in  
22 connection with the sale of the property. Plaintiffs have not yet produced documents  
23 (including but not limited to contracts or reports) related to such inspections.  
24 Defendants now move this Court to compel Plaintiffs to either produce any responsive  
25 documents, or to state unequivocally that they do not have any additional responsive  
26 documents in their custody, possession, or control. (*See also* Ex. E hereto.)  
27  
28

1        **REQUEST NO. 5**

2        **Request:** All documents evidencing complaints or demands by Plaintiffs to any  
3        person or entity – including but not limited to Orkin, other companies providing  
4        pest control services, or any governmental agency – about termites or other pests  
5        at the property located at 33755 Weyland Court, Union City, California.

6        **Answer:** Plaintiffs incorporate each of the general objections above. Subject to  
7        and without waiver of the foregoing objections, Plaintiffs state that non-  
8        privileged responsive documents will be produced.

9        **Grounds to Compel:** Although Plaintiffs stated that “non-privileged responsive  
10       documents would be produced,” Plaintiffs have not produced any documents in  
11       response to Request No. 5. Any complaints made by Plaintiffs regarding pests or  
12       termites at their property are relevant to the allegations of the complaint and Orkin’s  
13       defenses thereto, and therefore should be produced. Defendants now move this Court  
14       to compel Plaintiffs to produce any responsive documents, or to state unequivocally  
15       that they do not have any additional responsive documents in their custody, possession,  
16       or control.

17       **REQUEST NO. 6**

18       **Request:** All blueprints for, plans for, or appraisals of the property located at  
19       33755 Weyland Court, Union City, California, and any and all documents  
20       relating to buying or selling said property.

21       **Answer:** Plaintiffs incorporate each of the general objections above. Subject to  
22       and without waiver of the foregoing objections, Plaintiffs state that non-  
23       privileged responsive documents will be produced.

24       **Grounds to Compel:** Although Plaintiffs stated that “non-privileged responsive  
25       documents would be produced,” Plaintiffs have not yet produced any documents in  
26       response to Request No. 6. The construction of Plaintiffs’ property directly affects  
27       Orkin’s obligations under the contract and Orkin’s ability to control termites.  
28       Defendants now move this Court to compel Plaintiffs to produce any responsive

documents, or to state unequivocally that they do not have any additional responsive documents in their custody, possession, or control.

#### **REQUEST NO. 7**

**Request:** All documents – including but not limited to promotional materials and brochures – supporting or relating to Plaintiffs’ claim that Orkin misrepresented facts or made material omissions of fact that induced Plaintiffs to enter into any subterranean termite contract or contract renewal.

**Answer:** Plaintiffs incorporate each of the general objections above. Plaintiffs further object to this request on the grounds that it is premature in that Plaintiffs have not yet completed their investigation in that discovery is only just commencing. Subject to and without waiver of the foregoing objections, Plaintiffs state all the service records and marketing materials in possession of Plaintiffs were identified in Plaintiffs’ initial disclosures and constitutes all documents in Plaintiffs’ possession at this time and that non-privileged responsive documents will be produced.

**Grounds to Compel:** Plaintiffs produced only one brochure in response to this request (KRZYZ 110-125). At his deposition, Mr. Krzyzanowski stated that he may have received another brochure prior to entering into his 1999 contract with Orkin. Plaintiffs have not produced any additional brochures, despite repeated requests for such documents. Defendants now move this Court to compel Plaintiffs to produce any additional brochures or advertising materials, or to state unequivocally that they do not have any additional responsive documents in their custody, possession, or control.

#### **REQUEST NO. 9**

**Request:** All documents that reference or constitute standards concerning the treatment of or inspection for subterranean termites that Plaintiffs contend Orkin violated.

**Answer:** Plaintiffs incorporate each of the general objections above, particularly, General Objection No. 4. Plaintiffs further object to this request on the grounds that it is premature in that Plaintiffs have not yet completed their investigation in that discovery is only just commencing. Subject to and without waiver of the foregoing objections, *Plaintiffs state that any documents responsive to this request are Defendants’ own documents that are already in*

1 *the possession of Defendants and are more readily available to the Defendants*  
2 [emphasis supplied].

3 **Ground to Compel:** This response is insufficient because it fails to provide any  
4 *facts* to support the allegations in the complaint. Orkin's alleged violation of  
5 unidentified "standards" is a key part of the complaint and will undoubtedly be the  
6 basis for Plaintiffs' motion for class certification. Yet Plaintiffs have refused to identify  
7 the so-called standards that they alleged Orkin violated. (*See also* Response to  
8 Interrogatory No. 11.) This response is further insufficient in that it refers ambiguously  
9 to "Defendants' own documents," which Plaintiffs have not identified (*see, infra*, at pp.  
10 3-4). Defendants now move this Court to compel Plaintiffs to provide a complete  
11 response to this request. (*See* additional grounds to compel on Request No. 9, *infra* at  
12 pp. 19-20.)  
13

#### 14 **REQUEST NO. 10**

15 **Request:** Any documents relating or referring to any practice or policy of Orkin  
16 – including but not limited to advertising, sales, treatments, or inspection – that  
17 you claim fails to meet industry standards or applicable federal or state law.

18 **Answer:** Plaintiffs incorporate each of the general objections above,  
19 particularly, General Objection No. 4. Plaintiffs further object to this request on  
20 the grounds that it is premature in that Plaintiffs have not yet completed their  
21 investigation in that discovery is only just commencing. Subject to and without  
22 waiver of the foregoing objections, *Plaintiffs state that any documents*  
23 *responsive to this request are Defendants' own documents that are already in*  
24 *the possession of Defendants and are more readily available to the Defendants*  
25 [emphasis supplied].

26 **Ground to Compel:** This response is insufficient because it fails to provide any  
27 *facts* to support the allegations in the complaint. Orkin's "practices or policies" are a  
28 key part of the complaint and will undoubtedly be the basis for Plaintiffs' motion for  
class certification. Yet Plaintiffs have refused to identify or produce any documents  
related to the "practices or policies" that they allege fail to comply with law or industry

standards (see also Response to Interrogatory No. 11). This response is further insufficient in that it refers to “Defendants’ own documents” because thousands of pages of such documents have already been produced to Plaintiffs (see, *infra*, at 3-4). Defendants now move this Court to compel Plaintiffs to provide a complete response to this request. (See additional grounds to compel on Request No. 10, *infra* at pp. 19-20.)

### **REQUEST NO. 11**

**Request:** All documents relating to any damages allegedly sustained by Plaintiff for which recovery (in an individual or representative capacity) is sought pursuant to this lawsuit.

**Answer:** Plaintiffs incorporate each of the general objections above, particularly, General Objection No. 4. Plaintiffs further object to this request on the grounds that it is premature in that Plaintiffs have not yet completed their investigation in that discovery is only just commencing. Subject to and without waiver of the foregoing objections, *Plaintiffs state that any documents responsive to this request are Defendants’ own documents that are already in the possession of Defendants and are more readily available to the Defendants* [emphasis supplied].

**Grounds to Compel:** This response does not provide “a computation of each category of damages” and “documents . . . on which each computation is based, including materials bearing on the nature and extent of injuries suffered,” as required by F.R.C.P. 26(a)(1)(A)(iii). Plaintiffs should be compelled to provide basic information regarding their claims for damages and the bases therefor. Moreover, it is difficult to see how Orkin would have in its own possession documents related to Plaintiffs’ computation of their damages. (*See* additional grounds to compel on Request No. 11, *infra* at pp. 19-20; *see also* Ex. E hereto.)

### **REQUEST NO. 17**

**Request:** Any documents reflecting or relating in any way to communications between you or your agents and any other potential members of the putative classes alleged in the complaint or any subsequent amendment thereto.

1       **Answer:** Plaintiffs incorporate each of the general objections above,  
2 particularly, General Objection Nos. 1, 2, 3 and 4. Subject to and without waiver  
3 of the foregoing objections, Plaintiffs state that all the service records and  
4 marketing materials in possession of Plaintiffs were identified in Plaintiffs' initial  
disclosures and constitutes all documents in Plaintiffs' possession at this time and  
that non-privileged responsive documents will be produced.

5       **Grounds to Compel:** Although Plaintiffs stated that "non-privileged responsive  
6 documents would be produced," Plaintiffs have not produced any documents in  
7 response to Document Request No. 17. Communications between Plaintiffs and  
8 putative class members are directly relevant to Plaintiffs' adequacy as class  
9 representatives. Defendants now move this Court to compel Plaintiffs to either produce  
10 any responsive documents, or to state unequivocally that they do not have any  
11 additional responsive documents in their custody, possession, or control.  
12

## 13                                   2.       **General Deficiencies in Responses (Nos. 9, 10, 11, 14, 19, 20)**

14       In response to several document requests seeking documents that go to the core  
15 of Plaintiffs' allegations, Plaintiffs responded by stating that "any documents  
16 responsive to this request are Defendants' own documents that are already in the  
17 possession of Defendants." All of these requests go to the core of Plaintiffs' complaint  
18 and the allegations contained therein – standards that Orkin allegedly violated, practices  
19 or policies of Orkin that allegedly failed to comply with industry standards or law,  
20 damages allegedly sustained by Plaintiffs, documents related to the incidents or  
21 practices alleged in the complaint, and documents related to the class allegations (see  
22 Fed. R. Civ. P. 26(b)(2)(C)(iii)). To the extent that any of the documents on which  
23 Plaintiffs are relying are part of the thousands that have already been produced, they  
24 must reasonably identify them so that Orkin can fairly know which documents  
25  
26  
27  
28

1 Plaintiffs intend to use to prove their putative class claims.<sup>4</sup> All of the following  
 2 requests suffer from the same defect that Plaintiffs should be ordered to correct.

### 3 **REQUEST NO. 9**

4 **Request:** All documents that reference or constitute standards concerning the  
 5 treatment of or inspection for subterranean termites that Plaintiffs contend Orkin  
 6 violated.

7 **Answer:** Plaintiffs incorporate each of the general objections above,  
 8 particularly, General Objection No. 4. Plaintiffs further object to this request on  
 9 the grounds that it is premature in that Plaintiffs have not yet completed their  
 10 investigation in that discovery is only just commencing. Subject to and without  
 11 waiver of the foregoing objections, *Plaintiffs state that any documents  
 responsive to this request are Defendants' own documents that are already in  
 the possession of Defendants and are more readily available to the Defendants*  
 [emphasis supplied].

### 12 **REQUEST NO. 10**

13 **Request:** Any documents relating or referring to any practice or policy of Orkin  
 14 – including but not limited to advertising, sales, treatments, or inspection – that  
 15 you claim fails to meet industry standards or applicable federal or state law.

16 **Answer:** Plaintiffs incorporate each of the general objections above,  
 17 particularly, General Objection No. 4. Plaintiffs further object to this request on  
 18 the grounds that it is premature in that Plaintiffs have not yet completed their  
 19 investigation in that discovery is only just commencing. Subject to and without  
 20 waiver of the foregoing objections, *Plaintiffs state that any documents  
 responsive to this request are Defendants' own documents that are already in  
 the possession of Defendants and are more readily available to the Defendants*  
 [emphasis supplied].

### 21 **REQUEST NO. 11**

22 **Request:** All documents relating to any damages allegedly sustained by Plaintiff  
 23 for which recovery (in an individual or representative capacity) is sought  
 24 pursuant to this lawsuit.

25  
 26 <sup>4</sup> As discussed above, Orkin agreed to allow Plaintiffs to use certain documents that had been  
 27 produced in other cases, but only on the grounds that Plaintiffs identify to Orkin during discovery  
 28 which of those documents it intended to rely on. Plaintiffs' counsel has recognized this obligation but  
 has of yet refused to provide such an identification.

**Answer:** Plaintiffs incorporate each of the general objections above, particularly, General Objection No. 4. Plaintiffs further object to this request on the grounds that it is premature in that Plaintiffs have not yet completed their investigation in that discovery is only just commencing. Subject to and without waiver of the foregoing objections, *Plaintiffs state that any documents responsive to this request are Defendants' own documents that are already in the possession of Defendants and are more readily available to the Defendants* [emphasis supplied].

#### **REQUEST NO. 14**

**Request:** All documents evidencing, reflecting, or relating in any way to the incidents or practices alleged in this action.

**Answer:** Plaintiffs incorporate each of the general objections above. Subject to and without waiver of the foregoing objections, Plaintiffs state all the service records and marketing materials in possession of Plaintiffs were identified in Plaintiffs' initial disclosures and constitutes all documents in Plaintiffs' possession at this time and *any documents responsive to this request are Defendants' own documents that are already in the possession of Defendants and as such are more readily available to Defendants* [emphasis supplied].

#### **REQUEST NO. 19**

**Request:** All documents related to the following class action allegations, with respect to each putative class defined in the complaint or any subsequent amended complaint:

- (a) class is so numerous that joinder of all members is impracticable;
- (b) questions of law or fact are common to the class and such questions predominate over any individual questions;
- (c) claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (d) you and your counsel will fairly and adequately represent the interests of the class; and
- (e) a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

**Answer:** Plaintiffs incorporate each of the general objections above, particularly, General Objection No. 4. Plaintiffs further object to this request on the grounds that it is premature in that Plaintiffs have not yet completed their investigation and that discovery is only just commencing. Subject to and without waiver of the foregoing objections, *Plaintiffs state that any documents*

1 *responsive to this request are Defendants' own documents that are already in*  
 2 *the possession of Defendants and as such are more readily available to the*  
 3 *Defendants* [emphasis supplied].

#### 4 **REQUEST NO. 20**

5 **Request:** All documents that reflect or relate to the allegedly common evidence  
 6 you identified in response to Interrogatory 16.

7 **Answer:** Plaintiffs incorporate each of the general objections above,  
 8 particularly, General Objection No. 4. Plaintiffs further object to this request on  
 9 the grounds that it is premature in that Plaintiffs have not yet completed their  
 10 investigation in that discovery is only just commencing. Subject to and without  
 11 waiver of the foregoing objections, *Plaintiffs state that any documents*  
 12 *responsive to this request are Defendants' own documents that are already in*  
 13 *the possession of Defendants and as such are more readily available to the*  
 14 *Defendants* [emphasis supplied].

### 13 **III. Second Set of Discovery**

14 On June 13, 2008, Orkin served Plaintiffs with their Second Set of  
 15 Interrogatories, which included just one interrogatory (Ex. G) and Second Set of  
 16 Requests for Documents, which included just four document requests (Ex. H). Timely  
 17 responses would have been due July 14; Orkin extended the deadline, per Plaintiffs'  
 18 request. The last extension granted Plaintiffs until late-July to respond to the Second  
 19 Set of Discovery; Plaintiffs still have not served any responses whatsoever. Orkin,  
 20 therefore, hereby moves to compel responses to Orkin's Second Set of Requests for  
 21 Production of Documents and Second Set of Interrogatories.

### 22 **IV. Conclusion**

23 For the foregoing reasons, Defendants respectfully request that the Court grant  
 24 Defendants' Motion to Compel responses to Defendants' First Set of Interrogatories  
 25 (Nos. 3, 5, 7, 8, 10, 11, 13, 16), Defendants' First Set of Requests for Production of  
 26 Documents (Nos. 1, 2, 4, 5, 6, 7, 9, 10, 11, 14, 17, 19, 20), Orkin, Inc.'s Second Set of  
 27 Interrogatories, and Orkin, Inc.'s Second Set of Requests for Production of Documents,  
 28

1 and require Plaintiffs to pay reasonable expenses that the Defendants incurred in filing  
2 this motion, including attorneys' fees, pursuant to Federal Rule of Civil Procedure  
3 37(a)(5)(A).  
4

5 Dated: August 20, 2008

CALL, JENSEN & FERRELL  
A Professional Corporation  
Mark L. Eisenhut  
Matthew R. Orr

6  
7  
8 By: s/Matthew R. Orr  
9 Matthew R. Orr

10 Attorneys for Defendants Orkin Exterminating  
11 Company, Inc. and Rollins, Inc.  
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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

RONALD KRZYZANOWSKI AND  
ILEANA KRZYZANOWSKI, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

ORKIN EXTERMINATING COMPANY,  
INC.; ROLLINS, INC.

Defendants.

Case No. 3:07-cv-05362-SBA (EDL)

**MOTION TO COMPEL BY  
DEFENDANTS ORKIN, INC. (f/k/a  
ORKIN EXTERMINATING CO.,  
INC.) AND ROLLINS, INC.**

**NOTICED FOR HEARING ON  
\_\_\_\_\_ AT 9:00 A.M.**

**[PROPOSED] ORDER ON DEFENDANTS' MOTION TO COMPEL**

Having considered the Motion to Compel by Defendants Orkin, Inc. (f/k/a Orkin Exterminating Co., Inc.) and Rollins, Inc., and Plaintiffs' response thereto, and having heard argument on said motion on \_\_\_\_\_, 2008, Defendants' Motion to Compel is hereby GRANTED. Plaintiffs shall provide full and complete discovery responses on or before 15 days after entry of this order.

Dated: \_\_\_\_\_

\_\_\_\_\_  
ELIZABETH D. LAPORTE  
United States Magistrate Judge

**CERTIFICATE OF SERVICE**  
(United States District Court)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On August 20, 2008, I have served the foregoing document described as **MOTION TO COMPEL BY DEFENDANTS ORKIN, INC. (f/k/a ORKIN EXTERMINATING CO., INC.) AND ROLLINS, INC.** on the following person(s) in the manner(s) indicated below:

**SEE ATTACHED SERVICE LIST**

☒ (BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing User(s) through the Court's Electronic Filing System.

☐ (BY MAIL) I am familiar with the practice of Call, Jensen & Ferrell for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call, Jensen & Ferrell, Newport Beach, California, following ordinary business practices.

☐ (BY OVERNIGHT SERVICE) I am familiar with the practice of Call, Jensen & Ferrell for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by the overnight service provider the same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by the overnight service provider with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by the overnight service provider at Call, Jensen & Ferrell, Newport Beach, California, following ordinary business practices.

☐ (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the transmittal sheet, I transmitted from a facsimile transmission machine, which telephone number is (949) 717-3100, the document described above and a copy of this declaration to the person, and at the facsimile transmission telephone numbers, set forth herein. The above-described transmission was reported as complete and without error by a properly issued transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission.

☐ (BY E-MAIL) I transmitted the foregoing document(s) by e-mail to the addressee(s) at the e-mail address(s) indicated.

1 [ X ] (FEDERAL) I declare that I am a member of the Bar and a registered Filing User  
2 for this District of the United States District Court.

3 [ ] (FEDERAL) I declare that I am employed in the office of a member of the Bar  
4 of this Court at whose direction the service was made.

5 I declare under penalty of perjury under the laws of the United States of America  
6 that the foregoing is true and correct, and that this Certificate is executed on August 20,  
2008, at Newport Beach, California.

7  
8 s/Matthew R. Orr  
Matthew R. Orr

**SERVICE LIST**

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# **EXHIBIT A**

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Exterminating Co., Inc.), and Rollins, Inc.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

RONALD KRZYZANOWSKI AND  
ILEANA KRZYZANOWSKI, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

Case No. 3:07-cv-05362-MJJ

**DECLARATION IN SUPPORT OF  
MOTION TO COMPEL BY  
DEFENDANTS ORKIN, INC. (f/k/a**

1 ORKIN EXTERMINATING COMPANY,  
2 INC.; ROLLINS, INC.

**ORKIN EXTERMINATING CO.,  
INC.) AND ROLLINS, INC.**

3 Defendants.  
4

5  
6 I, Theodore R. Scarborough, hereby declare the following:

7  
8 1. I am a partner at the law firm of Sidley Austin LLP, counsel for  
9 defendants Orkin, Inc. and Rollins, Inc. ("Defendants") in this action. I make this  
10 Declaration in support of Defendants' Motion to Compel. Unless otherwise stated, the  
11 matters contained in this declaration are of my own personal knowledge and, if called  
12 as a witness, I could and would testify competently to the matters set forth herein.  
13

14 2. Defendants' First Set of Interrogatories and Defendants' First Set of  
15 Requests for Production of Documents were served on Plaintiffs on or about March 7,  
16 2008.  
17

18 3. Plaintiffs served their Responses to Defendants' First Set of  
19 Interrogatories (a true and accurate copy of which is attached to Defendants' Motion to  
20 Compel as Ex. B) and Responses to Defendants' First Set of Requests for Production of  
21 Documents (a true and accurate copy of which is attached to Defendants' Motion to  
22 Compel as Ex. C) on or about April 18, 2008.  
23

24 4. On May 1, 2008, Defendants' counsel and Plaintiffs' counsel held a  
25 telephonic meet and confer session to discuss Plaintiffs' responses to Defendants' first  
26 set of discovery.  
27  
28

1           5.     On June 6, 2008, Defendants' counsel sent a letter to Plaintiffs'  
2 counsel (a true and accurate copy of which is attached to Defendants' Motion to  
3 Compel as Ex. D) again asking for Plaintiffs' response as to the outstanding discovery  
4 issues raised during the May 1, 2008 meet and confer session.  
5

6           6.     The parties held an in-person meet and confer session in Atlanta,  
7 Georgia on June 24, 2008, in addition to several other telephonic meet and confer  
8 sessions including calls on June 23, 25, and 30, 2008.  
9

10          7.     On June 25, 2008, defense counsel sent a letter to Plaintiffs' counsel  
11 Dan Bradley (a true and accurate copy of which is attached to Defendants' Motion to  
12 Compel as Ex. E), discussing several outstanding discovery issues.  
13

14          8.     A true and accurate copy of a July 21, 2008 letter from Plaintiffs'  
15 counsel is attached to Defendants' Motion to Compel as Ex. F.  
16

17          9.     On or about June 13, 2008, Defendants served their Second Set of  
18 Interrogatories (a true and accurate copy of which is attached to Defendants' Motion to  
19 Compel as Ex. G) and their Second Set of Requests for Production of Documents (a  
20 true and accurate copy of which is attached to Defendants' Motion to Compel as Ex.  
21 H).  
22

23          10.    Plaintiffs have not yet served written responses to Defendants'  
24 Second Set of Requests for Production of Documents or Defendants' Second Set of  
25 Interrogatories, despite assurances that such responses would be forthcoming.  
26  
27  
28

1 I declare under penalty of perjury that the foregoing is true and correct and  
2 that this declaration was executed on August 20, 2008 in Chicago, Illinois.  
3

4  
5 Dated: August 20, 2008

Theodore R. Scarborough  
Theodore R. Scarborough

# **EXHIBIT B**

1 H. TIM HOFFMAN, SBN 49141  
2 ARTHUR W. LAZEAR, SBN 83603  
3 MORGAN M. MACK SBN 212659  
4 HOFFMAN & LAZEAR  
5 180 Grand Avenue, Suite 1550  
6 Oakland, CA 94612  
7 Telephone: (510) 763-5700  
8 Fax: (510) 835-1311

9 CHRISTIAN H. HARTLEY, *pro hac*  
10 DANIEL M. BRADLEY, *pro hac*  
11 MATHEW D. HAMRICK  
12 RICHARDSON PATRICK WESTBROOK & BRICKMAN, LLC  
13 1017 Chuck Dawley Blvd.  
14 Mount Pleasant, SC 29464  
15 Phone: 843-727-6500  
16 Fax: 843-881-6183

17 THOMAS F. CAMPBELL, *pro hac*  
18 CAMPBELL LAW  
19 A PROFESSIONAL CORPORATION  
20 100 Concourse Parkway, Suite 115  
21 Birmingham, AL 35244  
22 Telephone: (205) 278-6650  
23 Fax: (205) 278-6654

24 Attorneys for Plaintiffs

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RONALD KRZYZANOWSKY AND  
ILEANA KRZYZANOWSKY, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

ORKIN EXTERMINATING COMPANY,  
INC.; ROLLINS, INC.

Defendants.

Case No. C07-05362 SBA

**PLAINTIFFS' RESPONSE TO  
DEFENDANTS' FIRST SET OF  
INTERROGATORIES DATED  
APRIL 18, 2008**



**GENERAL OBJECTIONS**

A. PLAINTIFFS object to ORKIN'S interrogatories to the extent they purport to impose on PLAINTIFFS' duties and obligations which exceed, or are different from, those imposed by the applicable Rules of Civil Procedure and/or the Local Rules of this Court.

B. PLAINTIFFS object to ORKIN'S interrogatories insofar as they request information protected by attorney-client privilege, embody the thoughts, mental impressions or other confidential work-product of PLAINTIFFS' attorneys, or any other applicable privilege or immunity (collectively referred to as "Privileges").

C. PLAINTIFFS do not waive and expressly reserves all objections as to the genuineness, foundation, competence, relevance, materiality, privileged status or admissibility of this response, or any of them, and the information provided therein, as evidence in connection with any proceeding or at trial of this or any other action.

D. PLAINTIFFS and their attorneys have not completed their investigation of the facts relating to this case and have not completed their preparation for trial. This response is made without prejudice to PLAINTIFFS' right to utilize subsequently discovered evidence at trial or in connection with pretrial proceedings, or to amend this response in the event that any information is subsequently acquired or learned by PLAINTIFFS or inadvertently omitted in this response. PLAINTIFFS expressly reserve the right to amend, modify, or supplement the responses and objections stated herein. PLAINTIFFS further reserve the right to rely on any facts, documents, or other evidence which may develop or come to PLAINTIFFS' attention at a later date. PLAINTIFFS further reserve the right to rely on expert testimony.

E. PLAINTIFFS object to ORKIN'S interrogatories insofar as they are duplicative of each other and thus place an unnecessary burden on PLAINTIFFS.

1 F. PLAINTIFFS object to each and every interrogatory to the extent that it seeks  
2 information neither relevant to any issue in the instant action nor reasonably calculated to lead  
3 to the discovery of admissible evidence.

4  
5 G. PLAINTIFFS object to each and every interrogatory as unduly burdensome,  
6 oppressive, harassing, and abusive of the discovery process to the extent it seeks information in  
7 Defendants' control, already produced to Defendants or within the possession, custody, or  
8 control of third parties or public records, and therefore equally available to them.

9  
10 H. PLAINTIFFS object to each and every interrogatory as unduly burdensome,  
11 oppressive, harassing, and abusive of the discovery process to the extent it seeks information  
12 within the possession, custody, or control of Defendants.

13 I. PLAINTIFFS object to each and every interrogatory as unduly burdensome,  
14 oppressive, harassing, and abusive of the discovery process to the extent it seeks information  
15 not in PLAINTIFFS' possession, custody, or control.

16  
17 J. PLAINTIFFS incorporate by reference each General Objection set forth above in  
18 the specific responses set forth below.

19  
20 **SPECIFIC OBJECTIONS AND RESPONSES**

21  
22 Subject to and without waiving or limiting the above-asserted General Objections and  
23 incorporating each and every such objection by reference into each of the Responses below,  
24 PLAINTIFFS further respond to each Interrogatory as follows:  
25  
26  
27  
28

## INTERROGATORIES

**INTERROGATORY 1.**

List the names and addresses of all persons who are believed or known by you, your agents, or your attorneys to have any knowledge concerning any of the issues in this lawsuit; and specify the subject matter about which the person has knowledge.

**ANSWER:** Plaintiffs object to this interrogatory to the extent that it calls for information protected by the attorney-client privilege or the work product doctrine and on the grounds that the interrogatory is overly broad, vague, and ambiguous.

Furthermore, Plaintiffs object that this interrogatory is unduly burdensome because Defendants are in the best position to know the names and addresses of most or all of the people with knowledge of Defendants' actions in this lawsuit.

Without waiving said objections, Plaintiffs believe that other than named Plaintiffs and their attorneys there are none at this time. Defendants' files likely contain the names, addresses and contact information of the people with knowledge of the Defendants' conduct which is relevant to this action. Plaintiffs' reserve the right to supplement this answer after obtaining discovery from the Defendants.

**INTERROGATORY 2.**

Identify each occasion on which you have communicated with Orkin, or any current or former employee or agent, or independent contractor of Orkin, whether by telephone, in writing, or otherwise. Identify the person with whom you communicated, the date of such communication, and the substance of such communication.

1 **ANSWER:** Plaintiffs object to this interrogatory to the extent that it calls for  
2 information protected by the attorney-client privilege or the work product doctrine and  
3 on the grounds that the interrogatory is overly broad, vague, ambiguous and a meaningful  
4 response to this interrogatory is not possible at this time as it uses undefined terms.  
5 Plaintiffs further object to this interrogatory because it seeks irrelevant information not  
6 germane to the claims in this lawsuit.  
7

8 Without waiving said objections, Plaintiffs recall having various conversations with  
9 Defendants' employees that have visited Plaintiffs' property and has had numerous  
10 contacts with Defendants' representatives who spoke about the services which were to be  
11 provided and the level of satisfaction with Defendants' services. Statements by  
12 Defendants' representatives corresponded to those in Defendants' written materials.  
13 Plaintiff relied on Defendants to use their professional expertise to do what was necessary  
14 and required in order to prevent termite infestations including the identification of  
15 conditions that may exist and possibly interfere with the termite prevention services.  
16  
17

18 Plaintiffs recall discussing the evidence of termite infestations around their home  
19 and what remedial work would be required to stop the infestation including, for example,  
20 removal of insulation in certain areas to allow for better inspection. Plaintiffs further  
21 recall discussing the installation of french drains along the foundation and under slabs  
22 adjoined to the house and being reassured by Defendants that this would not interfere  
23 with their termite protection plan. Additionally, although not material to class claims,  
24 Plaintiffs recall having been giving verbal reassurances on multiple occasions regarding  
25 the termite infestations and that all problems had been taken care of by Defendants.  
26  
27  
28

**INTERROGATORY 3.**

Identify all facts that support or relate to the following class action allegations, with respect to each putative class defined in the complaint or any subsequent amended complaint:

- (a) the putative class is so numerous that joinder of all members is impracticable;
- (b) common questions of law and fact predominate over any individual questions;
- (c) claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (d) you and the putative class counsel will fairly and adequately represent the interests of the class; and
- (e) a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

**ANSWER:** Plaintiffs object to this interrogatory as premature to the extent that it calls for information that is not readily available to the Plaintiffs and information that will need to be provided by Defendants through the course of discovery. Plaintiffs further object that this interrogatory calls for a legal conclusion and disclosure of attorney-client privilege and/or attorney work-product.

Without waiving said objections, Plaintiffs direct Defendants to Plaintiffs' Complaint generally which states as follows:

- a. Upon information and belief, the number of customers Orkin has placed under a repair or service agreement since 1987 is believed to be in the thousands. Orkin does business in many major cities in California and Orkin's website, in a press release, claims that "Orkin, Inc. provides essential pest control services to approximately 1.6 million residential and

1 commercial customers.” Orkin’s website discusses acquisitions of  
2 competitors in California, further supporting the allegation that Orkin’s  
3 California customers have numbered in the thousands. Supporting records  
4 are likely in the sole possession of the Defendants. Plaintiffs will likely  
5 supplement this answer at the time of filing their class certification motion.  
6

7 b. Upon information and belief, the common questions of law and fact  
8 applicable to all class members are believed to include

9 (a) Defendants failure to perform the services necessary to make the  
10 necessary recommendations for alterations to structures or foundation areas  
11 so as to make application of a complete chemical barrier an effective  
12 preventative or control measure against termites;  
13

14 (b) Defendants failure to make complete, proper and adequate initial  
15 inspections or annual re-inspections as required by law and by contract of  
16 the California properties under contract;  
17

18 (c) Defendants failure to apply a full label rate application of termiticide  
19 chemicals in accordance with labels and good practice;  
20

21 (d) Defendants failure to apply and maintain a proper termite chemical  
22 barrier as required by contract and law;

23 (e) Defendants failure to maintain chemical barriers which were applied  
24 after they were know to have probably become ineffective;

25 (f) Defendants failure to perform adequate treatments in accordance  
26 with label and industry standards;  
27  
28

(g) Defendants failure to inform consumers of the failure of protective measures to induce additional payments, premiums, and alternative control or prevention services;

(h) Defendants illegal raising annual renewal fees;

(i) Defendants failure to apply complete applications of chemical to all critical areas when providing chemical barrier protection in a stand-alone service or in combination with a baiting system;

(j) Defendants failure to disclose that its baiting system did not act as a "bait" or lure for termites;

(k) Defendants false advertising and selling of prevention and control services as baits without providing a bait for termites;

(l) Defendants failure to refund premiums and charges to customers after it knew or should have known that its prior service was no longer reasonably expected to be delivering a complete barrier to termite infestation;

(m) Defendants failure to conduct quality control checks that were reasonably designed to fix prior faulty service;

(n) Defendants actively concealed past service failures by making incomplete remedial treatments at the direction of Rollins and Orkin executives and high level managers;

(o) Defendants continued to accept premiums from customers for "Lifetime" protection contracts when its executives and high level managers were disclosing to industry insiders that it could not fulfill said promises;

1 (p) Defendants Inserted limitations of remedies and damages clauses into  
2 contracts to conceal its wrongdoing;

3 (q) Defendant made deceptive claims about its ability to identify "new"  
4 termite damage;

5 (r) Defendants engaged in deceptive practices of killing known or  
6 suspected live termite infestations to create reasons to deny claims for  
7 termite damages occurring during the course of termite treatments;

8 (s) Defendant intentionally deceived customers about the quality and  
9 thoroughness of remedial termite chemical applications;

10 (t) Defendants switched customers to different services to conceal past  
11 wrongdoing;

12 (u) Defendants failure to correct false statements about the incidence of  
13 termite infestation;

14 (v) Defendants failure to refund monies it has held without providing the  
15 promised services;

16 (w) Defendants discouraged property owners from obtaining services  
17 from other vendors by concealing its failures of performance;

18 (x) Defendants collected money from customers without disclosing any  
19 of the above or performing the services described above; and,

20 (y) Defendants failure to make the necessary inspections to discover the  
21 extent of termite damage and termite treatment deficiencies.

22 c. Upon information and belief, it is believed, based on Defendants' use of  
23 standardized form contracts, standardized marketing materials, legal requirements under  
24  
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1 California law, and Defendants' standardized policies and procedures, that the above-  
2 listed common questions of law and fact relate to all potential class members and likewise  
3 form the bases for any claims the class may have. Prior to completion of discovery,  
4 Defendants are in the best position to identify the evidence supporting Plaintiffs'  
5 allegations. Information obtained by certain counsel in other cases supports Plaintiffs'  
6 allegations, but discovery in this case is in its infancy. Plaintiffs will provide any  
7 separately obtained evidence as part of the discovery process.  
8

9  
10 d. Plaintiffs object to this Interrogatory to the extent that it calls for a legal  
11 conclusion and invades the attorney-client privilege and/or seeks disclosure of attorney  
12 work-product. Plaintiffs further object to this interrogatory as premature in that it seeks  
13 information which would be part of a motion to certify the class. Subject to and without  
14 waiving their objections, Plaintiffs state they are parties to a standard, form contract.  
15 Plaintiffs understand the duties of a class representative and will act accordingly.  
16 Plaintiffs' Counsel have extensive experience in class action litigation throughout the  
17 United States and work with firms known for work in complex litigation and termite  
18 related litigation against these same Defendants. Upon information and belief, based on  
19 the above listed common questions of fact and law, Plaintiffs believe the facts relating to  
20 their case are common to the whole class and consistent with the claims of other class  
21 members. Counsels' experiences with other cases suggest Orkin's conduct is uniform and  
22 discovery will illuminate this issues. Defendants possess the information which supports  
23 these allegations.  
24

25  
26 e. This interrogatory is premature and cannot be meaningfully answered  
27 without substantial discovery from Defendants. Plaintiffs further object to this  
28

1 **interrogatory to the extent it seeks a legal conclusion about the propriety of class**  
2 **certification. Subject to and without waiving their objections, Plaintiffs state that based**  
3 **on the above listed common questions of fact and law, Plaintiffs believe that as a result of**  
4 **Defendants' standardized business practices and central control of policies and**  
5 **procedures, numerous customers were placed under the same or substantially similar**  
6 **repair or retreatment contracts that contain standardized language and that Orkin's**  
7 **conduct would be the same or substantially similar in all cases such that unitary**  
8 **adjudication would be inferior and involve thousands of separate lawsuits based on the**  
9 **same patterns and practices of Defendants. Furthermore, due to the costs of litigation, it**  
10 **would not be economical for any individual customer to litigate these claims to conclusion.**  
11 **Maintenance of separate lawsuits would be impractical and cost-prohibitive for the**  
12 **individual plaintiffs and would require the parties to duplicate efforts. Furthermore,**  
13 **unitary adjudication of the same claims for each of Defendants' thousands of California**  
14 **victims would unnecessarily waste judicial resources. As discovery is in its infancy,**  
15 **Plaintiffs will provide additional supporting evidence when they file their motion for class**  
16 **certification.**

17  
18  
19  
20  
21  
22 **INTERROGATORY 4.**

23 Identify all administrative proceedings or lawsuits filed in state or federal court in which  
24 you have been involved, or are currently involved, as a party or class member. For each such  
25 lawsuit, identify: (i) the case number, venue, and judge; (ii) whether you were a plaintiff or a  
26 defendant; and (iii) the status or disposition of the proceeding or lawsuit, whether by judgment,  
27 settlement, or otherwise.  
28

1 **ANSWER:** Plaintiffs object to this interrogatory as it seeks information that is neither  
2 relevant nor reasonably calculated to lead to the discovery of admissible evidence.  
3 Plaintiffs further object to this interrogatory to the extent that it calls for information  
4 protected by the attorney-client privilege or the work product doctrine and on the  
5 grounds that the interrogatory is overly broad, vague, ambiguous and a meaningful  
6 response to this interrogatory is not possible at this time as any other administrative  
7 proceedings or lawsuits in which Plaintiffs have been involved are not the subject of or the  
8 basis for Plaintiffs' contentions in this litigation.  
9  
10

11 Without waiving said objections, Plaintiffs employment as a city building inspector  
12 for the City of San Francisco routinely requires him to testify in various types of building  
13 disputes. However, to best of their recollection, neither named Plaintiff has previously  
14 been named as a party to any lawsuit or administrative proceeding. Plaintiffs' reserve the  
15 right to supplement this answer if necessary.  
16

17 **INTERROGATORY 5.**

18 Identify all damages that you allegedly incurred or that you seek to recover in this action  
19 as a result of the matters described in your complaint or any subsequent amended complaint.  
20 For each category or type of damages, provide the basis for such damages and the amount of  
21 such damages.  
22

23 **ANSWER:** Plaintiffs object to this interrogatory to the extent that it calls for  
24 information protected by the work product doctrine and on the grounds that the  
25 interrogatory is vague, ambiguous and a meaningful response to this interrogatory is not  
26 possible at this time as Plaintiffs have not completed their investigation or discovery.  
27  
28

1 Further, at this time Plaintiffs require information currently only in the possession of the  
2 Defendants in order to make a reasonable damages calculation.

3 Without waiving said objections, Plaintiffs refer Defendants to the allegations  
4 contained in the Complaint as the basis for any damages including but not limited to  
5 damages for breach of contract, money paid and lost for services either never rendered or  
6 incompletely rendered, the cost to apply a full barrier to protect from termites in  
7 accordance with California State Law and label requirements, as well as any incidental,  
8 consequential, statutory and punitive damages that may be applicable. Plaintiffs also seek  
9 equitable relief.  
10

11 **INTERROGATORY 6.**

12 To the extent that you are claiming termite damage, please describe with specificity each  
13 area of termite damage for which you claim Orkin is responsible and identify and describe (i)  
14 the extent of that subterranean termite damage, (ii) when the damage was first discovered, (iii)  
15 whether live termites accompanied the damage, (iv) the reasons that you believe the damage is  
16 termite-related, (v) any actions taken in response to the damage, and (vi) the cost of repairing  
17 that damage. Your answer should identify the basis of your opinions or contentions and identify  
18 the persons with knowledge about those subjects.  
19

20 **ANSWER:** Plaintiffs object to this interrogatory as it seeks information that is neither  
21 relevant nor reasonably calculated to lead to the discovery of admissible evidence.  
22 Plaintiffs further object to this interrogatory to the extent that it calls for information  
23 protected by the attorney-client privilege or the work product doctrine and on the  
24 grounds that the interrogatory is overly broad, vague, ambiguous and a meaningful  
25  
26  
27  
28

1 response to this interrogatory is not possible as it attempts to misdirect the claims of the  
2 class in an attempt to circumvent the class allegations.

3 Without waiving said objections, Plaintiffs have not requested damages for specific  
4 termite damage to their home as part of this suit. Rather, Plaintiffs claims are based on  
5 the allegations set forth in the complaint. Plaintiffs have no protection from termites  
6 which the Defendants have contracted to provide to them.  
7

8 **INTERROGATORY 7.**

9 Please identify each time you or any of your agents observed evidence of active termite  
10 infestation or possible termite infestation. Your answer should include the date of the  
11 observation and describe in detail what the person observed and any actions that were taken in  
12 response to said observation(s).  
13

14 **ANSWER:** Plaintiffs object to this interrogatory as it seeks information that is neither  
15 relevant nor reasonably calculated to lead to the discovery of admissible evidence.  
16 Plaintiffs object to this interrogatory on the grounds that the interrogatory is overly  
17 broad, vague, ambiguous and a meaningful response to this interrogatory is not possible  
18 as it uses undefined terms including "active infestation," "possible infestation," and  
19 "observation."  
20

21 Subject to, and without waiving said objections, Plaintiffs state that they discovered  
22 possible termite infestation at the time immediately preceding buying termite prevention  
23 services from the Defendants and at various times since contracting with Defendants, they  
24 have been informed of termite activity and possible infestations.  
25

26 **INTERROGATORY 8.**  
27  
28

1 Please identify each pest control employee (including Orkin employees), home  
2 inspector, contractor, engineer, appraiser, lawyer, consultant, or expert who visited the property  
3 that is the subject of this suit, identifying the person who visited the property, the date of the  
4 visit, and the purpose of their inspection(s).

5  
6 **ANSWER:** Plaintiffs object to this interrogatory as it seeks information that is neither  
7 relevant nor reasonably calculated to lead to the discovery of admissible evidence.  
8 Plaintiffs further object to this interrogatory to the extent that it calls for information  
9 protected by the attorney-client privilege or the work product doctrine and on the  
10 grounds that the interrogatory is overly broad, vague, ambiguous and a meaningful  
11 response to this interrogatory is not possible as it uses undefined terms.  
12

13 Without waiving said objections, Plaintiffs' attorneys visited Plaintiffs' home in  
14 order to assess the potential claims Plaintiffs may have against Defendants. Defendants  
15 are in the best position to know which of their employees visited Plaintiffs' property, when  
16 and for what purpose.  
17

18 **INTERROGATORY 9.**

19 Please identify each allegedly false promotional material, material omission, or oral  
20 misstatement that you contend forms the basis in whole or in part of any claim in this action.  
21 For each alleged material omission or oral misstatement, identify (i) the content of the  
22 statements or omissions, (ii) when they were made, (iii) by whom they were made, (iv) where  
23 they were made, (v) how they were made, (vi) the basis for Plaintiffs' claim that they were  
24 false, and (vii) how Plaintiff was injured by such alleged statements or omissions.  
25

26  
27 **ANSWER:** Plaintiffs object to this interrogatory on the grounds that the interrogatory  
28 is overly broad, vague, ambiguous, and a meaningful response to this interrogatory is not

1 possible as it uses undefined terms. Plaintiffs further object in that this interrogatory  
2 calls for information that is not readily available to the Plaintiffs and information that  
3 Defendants shall provide through the course of discovery.  
4

5 Without waiving said objections, Plaintiffs were provided sales materials,  
6 brochures, and other literature by the Defendants' in connection with and at the time the  
7 services Orkin contracted to provide. Plaintiffs contend that these materials contained  
8 false and misleading information and omissions that the Defendants knew were false and  
9 misleading and promises that the Defendants knew it had no intention of fulfilling. As a  
10 result of the information contained in Defendants promotional literature and contracts,  
11 Plaintiffs entered into a contract with Defendants for services that were never provided by  
12 Defendants. Plaintiffs are unaware of any oral misstatements.  
13

14 **INTERROGATORY 10.**

15 Please set forth in detail the factual basis for Plaintiffs' breach of contract claim,  
16 including, but not limited to (i) what actions constitute the breach, (ii) when the breach  
17 occurred, (iii) whether and how Plaintiff was injured by each such alleged breach, (iv) whether  
18 and how Plaintiff mitigated his damages, (v) whether and how Plaintiff fulfilled his or her own  
19 contractual obligations.  
20

21 **ANSWER:** Plaintiffs object to this interrogatory on the grounds that the interrogatory  
22 is overly broad, vague, ambiguous, and a meaningful response to this interrogatory is not  
23 possible as it uses undefined terms. Plaintiffs further object in that this interrogatory calls  
24 for information that is not readily available to the Plaintiffs at this time and information  
25 that will need to be provided by Defendants through the course of discovery. Plaintiffs  
26  
27  
28

1 further object in that this interrogatory calls for information that has been alleged in the  
2 complaint and is therefore redundant and burdensome.

3  
4 Subject to, and without waiving said objections, Plaintiffs contend, as detailed in  
5 the Complaint, that Defendants knowingly failed to provide the necessary services as they  
6 were obligated to under the terms of the contract, laws and legal duties and that are  
7 designed to prevent termite infestations through use of professional expertise by a  
8 regulated service providers. Plaintiffs' believe these services should include application  
9 and maintenance of a complete chemical barrier in accordance with law and professional  
10 duties and use of products that fulfill their promises (e.g., a "bait" should lure termites),  
11 all in compliance with the minimum standards. Plaintiffs lack the expertise and  
12 knowledge needed to provide proper service and rely on experts and attorneys who are  
13 experienced in the field. The breach continues to occur every day that these services were  
14 not provided by the Defendants. As a result of this breach, Plaintiffs are entitled to, *inter*  
15 *alia*, the return of the contract amount paid and the cost to apply a full and effective  
16 chemical barrier to protect the property from termites. Plaintiffs believe that they  
17 preformed all duties required of them to eliminate conditions conducive to termite  
18 infestation when and as instructed by Defendants. As discovery is in its infancy, Plaintiffs  
19 will provide Defendants further information at the appropriate time.  
20  
21

22  
23 **INTERROGATORY 11.**

24 Please describe in detail any Orkin policy or practice regarding subterranean termite  
25 services, sales, treatments, retreatments, applications, reapplications, inspections, or  
26 reinspections that you contend violate Orkin's contract, industry standards, or some other duty  
27 owed by Orkin to Plaintiff, and that you intend to establish on a class wide basis.  
28

1 **ANSWER:** Plaintiffs object to this interrogatory on the grounds that the interrogatory  
2 is overly broad, vague, and ambiguous. A meaningful response to this interrogatory is not  
3 possible as it uses undefined terms and it calls for information that is not readily available  
4 to the Plaintiffs at this time and will need to be provided by Defendants through the course  
5 of discovery.  
6

7 Without waiving said objections, upon information and belief Plaintiffs contend, as  
8 detailed in the Complaint, that Defendants knowingly failed to provide the necessary  
9 services as they were obligated to under the terms of the contract and in order to fulfill  
10 customers' reasonable expectations of protection from termite infestations. Plaintiffs  
11 further contend, as detailed in the Complaint, that Defendants routine practice and policy  
12 is to intentionally not provide services in accordance with label requirements and  
13 California law. Defendant possesses the information necessary to support these  
14 allegations. As discovery commences, Plaintiffs will provide Defendants additional  
15 examples of Defendants' documents and conduct which may be responsive to this  
16 Interrogatory.  
17  
18

19 **INTERROGATORY 12.**

20 For each termiticide that you contend Orkin used during the relevant time period at the  
21 property that is the subject of this litigation, please state (i) the date on which the termiticide  
22 was applied, (ii) the method by which the termiticide was applied, (iii) the time period or range  
23 of time that the termiticide became ineffective, and (iv) the reason that the termiticide became  
24 ineffective.  
25

26 **ANSWER:** Plaintiffs object to this interrogatory on the grounds that the interrogatory  
27 is overly broad, vague, and ambiguous. A meaningful response to this interrogatory is not  
28

1 possible as it uses undefined terms and it calls for information that is not readily available  
2 to the Plaintiffs at this time and will need to be provided by Defendants through the course  
3 of discovery. This Interrogatory is also unduly burdensome because Defendants already  
4 possess this information in their records.  
5

6 Without waiving said objections and upon information and belief, Plaintiffs allege  
7 that on or about July 2, 1999, both the termiticides Prelude and Timbor were applied in  
8 unknown quantities or methods to some of the exterior portions of the home. It is well  
9 known by Defendants that the expected life of this type of treatment, using the various  
10 products available to Defendants, is less than five years do to the natural breakdown and  
11 leaching of the chemicals.  
12

13 **INTERROGATORY 13.**

14 Please identify the factual basis for your contention that Orkin had a duty to perform a  
15 comprehensive retreatment of Plaintiffs' property after a certain period of time, even if there  
16 was no evidence of an infestation at the property.  
17

18 **ANSWER:** Plaintiffs object to this interrogatory on the grounds that the interrogatory  
19 is overly broad, vague, and ambiguous. A meaningful response to this interrogatory is not  
20 possible as it uses undefined terms and it calls for information that is not readily available  
21 to the Plaintiffs at this time and will need to be provided by Defendants through the course  
22 of discovery. This Interrogatory is also unduly burdensome because Defendants already  
23 possess this information in their records.  
24

25 Without waiving said objections, Plaintiffs contend, as detailed in the Complaint,  
26 that Defendants knowingly failed to provide the necessary services as they were obligated  
27 to under the terms of the contract, laws and legal duties and that are designed to prevent  
28

1 termite infestations through use of professional expertise by a regulated service providers.  
2 Plaintiffs' believe these services should include application and maintenance of a complete  
3 chemical barrier in accordance with law and professional duties and use of products that  
4 fulfill their promises (e.g., a "bait" should lure termites), all in compliance with the  
5 minimum standards. Plaintiffs lack the expertise and knowledge needed to provide  
6 proper service and rely on experts and attorneys who are experienced in the field. In  
7 order to perform their duties, Defendants would be required to perform a reapplication of  
8 chemicals after such time period that Defendants knew or should have known the previous  
9 applications of chemicals had worn off. Defendants, as experts in the field of termite  
10 protection, had a duty to use reasonable care in discharging their duties under the  
11 contract.  
12 contract.

13  
14 **INTERROGATORY 14.**

15 Please describe all conducive conditions at Plaintiffs' property that Orkin had a duty to  
16 warn of and/or correct prior to treating the property for subterranean termites.

17  
18 **ANSWER:** Plaintiffs object to this interrogatory on the grounds that the interrogatory  
19 is overly broad, vague, and ambiguous. A meaningful response to this interrogatory is not  
20 possible as it uses undefined terms and it calls for information that is not readily available  
21 to the Plaintiffs at this time and will need to be provided by Defendants through the course  
22 of discovery. This Interrogatory is also unduly burdensome because Defendants already  
23 possess this information in their records.  
24

25 Without waiving said objections, Plaintiffs contend, as detailed in the Complaint,  
26 that Defendants knowingly failed to provide the necessary services as they were obligated  
27 to under the terms of the contract, laws and legal duties and that are designed to prevent  
28

1 termite infestations through use of professional expertise by a regulated service providers.  
2 **Plaintiffs' believe these services should include application and maintenance of a complete**  
3 **chemical barrier in accordance with law and professional duties and use of products that**  
4 **fulfill their promises (e.g., a "bait" should lure termites), all in compliance with the**  
5 **minimum standards. Plaintiffs lack the expertise and knowledge needed to provide**  
6 **proper service and rely on experts and attorneys who are experienced in the field.**  
7 **Plaintiffs believe Defendants, as experts in the field, had a duty to warn about conditions**  
8 **such as those that would prevent Defendants from applying and maintaining a proper**  
9 **chemical barrier in accordance with label requirements and California law. Alternatively,**  
10 **Defendants had a duty to warn about such conditions.**

11 **INTERROGATORY 15.**

12 For each termiticide or baiting system you contend Orkin used during the relevant time  
13 period at Plaintiffs' property, please state what specific disclosure should have been provided to  
14 Plaintiff.

15 **ANSWER:** Plaintiffs object to this interrogatory on the grounds that the interrogatory  
16 is overly broad, vague, and ambiguous. A meaningful response to this interrogatory is not  
17 possible as it uses undefined terms and it calls for information that is not readily available  
18 to the Plaintiffs at this time and will need to be provided by Defendants through the course  
19 of discovery. This Interrogatory is also unduly burdensome because Defendants already  
20 possess this information in their records.

21 Without waiving said objections, under the terms of the standardized service  
22 agreement Defendants were obligated to disclose the shortcomings of such a system and  
23 the true nature of the product(s) used which were known and/or knowable to the  
24

1 Defendants as experts in their field, including the fact certain termiticides wear off over  
2 time and that bait systems do not attract termites due to the known biological behavior of  
3 termites and the known ecological properties of termite colonies.

4 **INTERROGATORY 16.**

5  
6 Identify each allegedly common issue of law or fact that you intend to try on a class  
7 wide basis, *see* Fed. R. Civ. P. 23(a)(2), and identify the common evidence that you will use to  
8 prove the elements of each substantive claim based on each such law or fact. If you do not  
9 already have the common evidence in your possession or under your control, identify the type  
10 of evidence you intend to use.

11  
12 **ANSWER:** Plaintiffs object to this interrogatory on the grounds that the interrogatory  
13 is overly broad, vague, and ambiguous. A meaningful response to this interrogatory is not  
14 possible as it uses undefined terms and it calls for information that is not readily available  
15 to the Plaintiffs at this time and will need to be provided by Defendants through the course  
16 of discovery. This Interrogatory is also unduly burdensome because Defendants already  
17 possess this information in their records. Plaintiffs further object that this interrogatory  
18 calls for a legal conclusion and disclosure of attorney-client privilege and/or attorney  
19 work-product.  
20

21  
22 Subject to, and without waiving their objections, Plaintiffs will address what  
23 evidence to present at such a time when the required evidence is under their control and  
24 routine discovery, including depositions, has yielded potential evidence. Generally,  
25 Plaintiffs anticipate using Defendants' standardized contracts, standardized marketing  
26 materials, standardized training materials, internal records of pesticide use, evidence of  
27 Defendants' policies and procedures, evidence of label requirements for termiticide  
28

1 product use and any other materials obtained in discovery. In addition, Plaintiffs  
2 anticipate offering expert testimony on termite control methods and about the  
3 development of the state-of-the-art in termite control over time.  
4

5  
6 DATED: April 18, 2008

7 By: /s/ Daniel M. Bradley  
8 DANIEL M. BRADLEY, *pro hac*  
9 Attorney for Plaintiffs

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# **EXHIBIT C**

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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA**

RONALD KRZYZANOWSKY AND  
 ILEANA KRZYZANOWSKY, on behalf of  
 themselves and all others similarly situated,

Plaintiffs,

vs.

ORKIN EXTERMINATING COMPANY,  
 INC.; ROLLINS, INC.

Defendants.

Case No. C07-05362 SBA

**PLAINTIFFS' RESPONSE TO  
 DEFENDANTS' FIRST REQUEST FOR  
 PRODUCTION OF DOCUMENTS DATED  
 APRIL 18, 2008**

**PLAINTIFFS' RESPONSE TO REQUEST FOR PRODUCTION**  
**GENERAL OBJECTIONS**

1. Plaintiffs object to each of the requests to the extent it calls for attorney work product and/or communications protected by the attorney-client privilege.

2. Plaintiffs object to each of the requests to the extent it calls for information as to consulting experts, which is privileged and protected from discovery; similarly each request is objectionable to the extent it seeks information or testimony from opinion experts, which is premature, and which will be provided in accordance with the Court's scheduling order.

3. Plaintiffs object to all of the requests as unduly burdensome to the extent they seek production of all evidence in support of the allegations, prior to the date on which plaintiffs have been allowed to conduct the discovery necessary to provide a complete response.

4. Plaintiffs object to all of the requests as unduly burdensome to the extent that the information requested is in the possession of the propounding defendants, is more easily obtained by the defendants, or is information that should be produced by the defendants in connection with discovery in this litigation.

Each of Plaintiffs' responses is subject to all of the foregoing objections.

**REQUESTS FOR PRODUCTION**

1. All documents – including but not limited to correspondence, notes, advertisements, brochures, or contracts – relating to or referring to any contract(s) or services provided thereunder (including the negotiation of any contracts) between either Plaintiffs and Orkin or Plaintiffs and any other pest control companies for treatment of termites or other insects for the property located at 33755 Weyland Court, Union City, California.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 1:** Plaintiffs

incorporate each of the general objections above. Subject to and without waiver of the foregoing objections, Plaintiffs state all the service records and marketing materials in possession of Plaintiffs were identified in Plaintiffs' initial disclosures and constitutes all documents in Plaintiffs' possession at this time and that non-privileged responsive documents will be produced.

2. All bills sent to Plaintiffs by Orkin for termite prevention or control services, and all documents showing proof of payment to Orkin for termite services rendered.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 2:** Plaintiffs

incorporate each of the general objections above. Subject to and without waiver of the foregoing objections, Plaintiffs state all the service records and marketing materials in possession of Plaintiffs were identified in Plaintiffs' initial disclosures and constitutes all documents in Plaintiffs' possession at this time and that non-privileged responsive documents will be produced.

3. All documents – including but not limited to correspondence, logs, notes, calendars, emails, estimates, bids, invoices, bills, or proposals – that relate to, refer to, or discuss termite infestations, termite damage, or repairs for termite damage, at the property located at 33755 Weyland Court, Union City, California.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 3:** Plaintiffs

incorporate each of the general objections above. Subject to and without waiver of the foregoing objections, Plaintiffs state all the service records and marketing materials in possession of Plaintiffs were identified in Plaintiffs' initial disclosures and constitutes all documents in Plaintiffs' possession at this time and that non-privileged responsive documents will be produced.

1           4. All documents relating or referring to any physical inspection of the property  
2 located at 33755 Weyland Court, Union City, California for any purpose.

3  
4           **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**           Plaintiffs

5 incorporate each of the general objections above. Subject to and without waiver of the  
6 foregoing objections, Plaintiffs state all the service records and marketing materials in  
7 possession of Plaintiffs were identified in Plaintiffs' initial disclosures and constitutes all  
8 documents in Plaintiffs' possession at this time and that non-privileged responsive  
9 documents will be produced.

10  
11           5. All documents evidencing complaints or demands by Plaintiffs to any person or  
12 entity – including but not limited to Orkin, other companies providing pest control services, or  
13 any governmental agency – about termites or other pests at the property located at 33755  
14 Weyland Court, Union City, California.

15           **RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**           Plaintiffs

16 incorporate each of the general objections above. Subject to and without waiver of the  
17 foregoing objections, Plaintiffs state that non-privileged responsive documents will be  
18 produced.

19  
20           6. All blueprints for, plans for, or appraisals of the property located at 33755  
21 Weyland Court, Union City, California, and any and all documents relating to buying or selling  
22 said property.

23           **RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**           Plaintiffs

24 incorporate each of the general objections above. Subject to and without waiver of the  
25 foregoing objections, Plaintiffs state that non-privileged responsive documents will be  
26 produced.

1           7. All documents – including but not limited to promotional materials and  
2 brochures – supporting or relating to Plaintiffs' claim that Orkin misrepresented facts or made  
3 material omissions of fact that induced Plaintiffs to enter into any subterranean termite contract  
4 or contract renewal.  
5

6           **RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**           Plaintiffs

7 incorporate each of the general objections above. Plaintiffs further object to this request  
8 on the grounds that it is premature in that Plaintiffs have not yet completed their  
9 investigation in that discovery is only just commencing. Subject to and without waiver of  
10 the foregoing objections, Plaintiffs state all the service records and marketing materials in  
11 possession of Plaintiffs were identified in Plaintiffs' initial disclosures and constitutes all  
12 documents in Plaintiffs' possession at this time and that non-privileged responsive  
13 documents will be produced.  
14

15           8. All insurance policies covering the property and claims for property damage that  
16 are the subject of this suit from the date of construction to present.  
17

18           **RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**           Plaintiffs

19 incorporate each of the general objections above. Subject to and without waiver of the  
20 foregoing objections, Plaintiffs respond that there are no known insurance policies  
21 covering the claims alleged by Plaintiffs in this suit.  
22

23           9. All documents that reference or constitute standards concerning the treatment of  
24 or inspection for subterranean termites that Plaintiff contend Orkin violated.  
25

26           **RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**           Plaintiffs

27 incorporate each of the general objections above, particularly, General Objection No. 4.  
28 Plaintiffs further object to this request on the grounds that it is premature in that  
Plaintiffs have not yet completed their investigation in that discovery is only just

1 commencing. Subject to and without waiver of the foregoing objections, Plaintiffs state  
2 that any documents responsive to this request are Defendants' own documents that are  
3 already in the possession of Defendants and are more readily available to the Defendants.  
4

5  
6 10. Any documents relating or referring to any practice or policy of Orkin –  
7 including but not limited to advertising, sales, treatments, or inspection – that you claim fails to  
8 meet industry standards or applicable federal or state law.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 10:** Plaintiffs

10 incorporate each of the general objections above, particularly, General Objection No. 4.  
11 Plaintiffs further object to this request on the grounds that it is premature in that  
12 Plaintiffs have not yet completed their investigation in that discovery is only just  
13 commencing. Subject to and without waiver of the foregoing objections, Plaintiffs state  
14 that any documents responsive to this request are Defendants' own documents that are  
15 already in the possession of Defendants and are more readily available to the Defendants.  
16

17 11. All documents relating to any damages allegedly sustained by Plaintiff for  
18 which recovery (in an individual or representative capacity) is sought pursuant to this lawsuit.

19 **RESPONSE TO REQUEST FOR PRODUCTION NO. 11:** Plaintiffs

20 incorporate each of the general objections above, particularly, General Objection No. 4.  
21 Plaintiffs further object to this request on the grounds that it is premature in that  
22 Plaintiffs have not yet completed their investigation in that discovery is only just  
23 commencing. Subject to and without waiver of the foregoing objections, Plaintiffs state  
24 that any documents responsive to this request are Defendants' own documents that are  
25 already in the possession of Defendants and are more readily available to the Defendants.  
26  
27  
28

12. All documents identified in response to Defendant Orkin's First Set of Interrogatories to Plaintiff, or that plaintiffs referred to or relied upon in responding to such interrogatories.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12: Plaintiffs**

incorporate each of the general objections above. Subject to and without waiver of the foregoing objections, Plaintiffs state all the service records and marketing materials in possession of Plaintiffs were identified in Plaintiffs' initial disclosures and constitutes all documents in Plaintiffs' possession at this time.

13. All documents reflecting or relating in any way to any communications between Plaintiffs and Orkin regarding the incidents or practices alleged in this action.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13: Plaintiffs**

incorporate each of the general objections above. Subject to and without waiver of the foregoing objections, Plaintiffs state all the service records and marketing materials in possession of Plaintiffs were identified in Plaintiffs' initial disclosures and constitutes all documents in Plaintiffs' possession at this time and that non-privileged responsive documents will be produced.

14. All documents evidencing, reflecting, or relating in any way to the incidents or practices alleged in this action.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14: Plaintiffs**

incorporate each of the general objections above. Subject to and without waiver of the foregoing objections, Plaintiffs state all the service records and marketing materials in possession of Plaintiffs were identified in Plaintiffs' initial disclosures and constitutes all documents in Plaintiffs' possession at this time and any documents responsive to this

1 request are Defendants' own documents that are already in the possession of Defendants  
2 and as such are more readily available to Defendants.

3  
4  
5 15. All documents prepared by, provided to, communicated to, shown to, or relied  
6 upon by any expert who may or will provide expert testimony in connection with class  
7 certification.

8 **RESPONSE TO REQUEST FOR PRODUCTION NO. 15:** Plaintiffs

9 incorporate each of the general objections above, particularly, General Objection Nos. 1, 2  
10 and 3. Subject to and without waiver of the foregoing objections, Plaintiffs state that no  
11 testifying experts have been retained at this time.

12  
13 16. All documents required to be produced pursuant to Fed. R. Civ. P. 26(a)(2).

14 **RESPONSE TO REQUEST FOR PRODUCTION NO. 16:** Plaintiffs

15 incorporate each of the general objections above particularly, General Objection Nos. 1, 2  
16 and 3. Subject to and without waiver of the foregoing objections, Plaintiffs state that no  
17 testifying experts have been retained at this time.

18  
19 17. Any documents reflecting or relating in any way to communications between  
20 you or your agents and any other potential members of the putative classes alleged in the  
21 complaint or any subsequent amendment thereto.

22 **RESPONSE TO REQUEST FOR PRODUCTION NO. 17:** Plaintiffs

23 incorporate each of the general objections above, particularly, General Objection Nos. 1,  
24 2, 3 and 4. Subject to and without waiver of the foregoing objections, Plaintiffs state that  
25 all the service records and marketing materials in possession of Plaintiffs were identified  
26 in Plaintiffs' initial disclosures and constitutes all documents in Plaintiffs' possession at  
27 this time and that non-privileged responsive documents will be produced.  
28

18. All documents evidencing the contract for performance of attorney services in prosecution of this action.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18: Plaintiffs**

incorporate each of the general objections above, particularly, General Objection Nos. 1, 2, 3 and 4.

19. All documents related to the following class action allegations, with respect to each putative class defined in the complaint or any subsequent amended complaint:

- (a) class is so numerous that joinder of all members is impracticable;
- (b) questions of law or fact are common to the class and such questions predominate over any individual questions;
- (c) claims or defenses of the representative parties are typical of the claims or defenses of the class;
- (d) you and your counsel will fairly and adequately represent the interests of the class; and
- (e) a class action is superior to other available methods for the fair and efficient adjudication of this controversy.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 19: Plaintiffs**

incorporate each of the general objections above, particularly, General Objection No. 4. Plaintiffs further object to this request on the grounds that it is premature in that Plaintiffs have not yet completed their investigation and that discovery is only just commencing. Subject to and without waiver of the foregoing objections, Plaintiffs state that any documents responsive to this request are Defendants' own documents that are already in the possession of Defendants and as such are more readily available to the Defendants.

20. All documents that reflect or relate to the allegedly common evidence you identified in response to Interrogatory 16.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 20: Plaintiffs**

incorporate each of the general objections above, particularly, General Objection No. 4. Plaintiffs further object to this request on the grounds that it is premature in that Plaintiffs have not yet completed their investigation in that discovery is only just commencing. Subject to and without waiver of the foregoing objections, Plaintiffs state that any documents responsive to this request are Defendants' own documents that are already in the possession of Defendants and as such are more readily available to the Defendants.

DATED: April 18, 2008

By: /s/ Daniel M. Bradley  
DANIEL M. BRADLEY, *pro hac*  
Attorney for Plaintiffs

DANIEL M. BRADLEY, *pro hac*  
CHRISTIAN H. HARTLEY, *pro hac*  
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Additional Plaintiffs Counsel on Next Page

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2 ARTHUR W. LAZEAR, SBN 83603  
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28

# **EXHIBIT D**

# CALL, JENSEN & FERRELL

A PROFESSIONAL CORPORATION

## LAWYERS

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June 6, 2008

OUR FILE NUMBER  
ORK01-02

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Morgan M. Mack, Esq.  
Hoffman & Lazear  
180 Grand Avenue, Suite 1550  
Oakland, CA 94612  
Fax: (510) 835-1311

Re: Krzyzanowsky v. Orkin Exterminating Company, et al.

Dear Counsel:

Enclosed please find Defendants' Responses and Objections to Plaintiffs' First Set of Interrogatories and Document Requests.

We are still waiting to hear your response as to the outstanding issues remaining from the meet and confer process we engaged in regarding Plaintiffs' discovery responses. It would be most appreciated if you would provide your input by no later than close of business June 13, 2008 as to those issues.

Also, as we have emphasized throughout this litigation, it is of the utmost importance that we coordinate the discovery processes in this case with those in the Sheppard case. If you intend to serve discovery for the Sheppard matter, please do so promptly so that Orkin may respond while it is preparing responses and gathering documents for the Krzyzanowski matter. Further,

June 6, 2008  
Page 2

should you have any concerns about the enclosed discovery responses, please let us know by close of business June 13, 2008, so that we can keep all discovery efforts on a coordinated track.

Very truly yours,

A handwritten signature in black ink, appearing to read "Matt Orr", with a stylized flourish at the end.

Matthew R. Orr  
For Call, Jensen & Ferrell  
A Professional Corporation

MRO/js  
Enclosure

# **EXHIBIT E**



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GENEVA	SYDNEY
HONG KONG	TOKYO
LONDON	WASHINGTON, D.C.

FOUNDED 1866

June 25, 2008

Via Email ([dbradley@rpwb.com](mailto:dbradley@rpwb.com)) and Post

Daniel M. Bradley  
Richardson Patrick Westbrook & Brickman LLC  
174 E. Bay Street  
Charleston, SC 29401

Re: *Krzyzanowski v. Orkin, Inc.*

Dear Dan:

Based on Mr. Krzyzanowski's deposition testimony given on May 20, 2008, there are several areas in which it appears his previous discovery responses are lacking. We ask that you supplement his discovery responses as follows:

1) In Document Request No. 1, Mr. Krzyzanowski was asked to produce all documents - including advertisements or brochures - relating to any contract he entered into with Orkin. At his deposition, Mr. Krzyzanowski stated that he may have received a document substantially similar to Exhibit 7 to his deposition prior to entering into the 1999 contract (Dep. at 138-140, 142). This 1998 brochure (or another substantially similar brochure) has not been produced; we ask that Mr. Krzyzanowski conduct a diligent search for the brochure and produce it if it is in his possession.

2) In Interrogatory No. 5, Mr. Krzyzanowski was asked to "identify all damages that you allegedly incurred or that you seek to recover in this action . . . [and] provide the basis for such damages and the amount of such damages." Damage calculations were also required to be provided as part of the Rule 26 initial disclosures. Additionally, in Document Request No. 11, Mr. Krzyzanowski was asked to produce all documents "relating to any damages allegedly sustained by Plaintiff for which recovery . . . is sought pursuant to this lawsuit." At his deposition, Mr. Krzyzanowski claimed that part of the damages sought in this case are damages for missed work (Dep. at 169-172). We ask that you provide the responsive information regarding these damages as soon as possible.



Daniel M. Bradley  
June 25, 2008  
Page 2

3) In Interrogatory No. 8, Mr. Krzyzanowski was asked to identify each pest control employee and home inspector who visited his property, including the person who visited the property, the date of the visit, and the purpose of the inspection. As Mr. Krzyzanowski stated at his deposition, a company called Termwright appears to have inspected the property as part of the sale to the Krzyzanowskis (Dep. at 47-50 ). He also stated that other inspections took place as part of the sale (*id.* at 52-53). We ask that you provide all identifying information with respect to these inspections, including the date, name of the inspector, purpose of the inspection, and any results of the inspection. Moreover, in Document Request No. 4, Mr. Krzyzanowski was asked to produce "all documents relating to any physical inspection" of his property. Accordingly, we ask that you produce any documents (including but not limited to contracts or reports) related to said inspections.

4) Finally, the interrogatory responses that we received were not verified by Mr. Krzyzanowski as required by Federal Rule 33(b)(5). We ask that you provide said verification immediately (*see also* Dep. at 206).

Very truly yours,

A handwritten signature in cursive script that reads "T. Robert Scarborough /km".

T. Robert Scarborough

cc: Douglas B. Brown  
Mark Eisenhut

# **EXHIBIT F**



RICHARDSON, PATRICK,  
WESTBROOK & BRICKMAN, LLC

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Elizabeth Middleton Burke  
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Aaron R. Dias  
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Nina H. Fields  
Thomas P. Gressette, Jr.  
H. Blair Hahn  
Daniel S. Hiltwanger  
Matthew D. Hamrick  
Christian H. Hartley  
David Hendricks  
Gregory A. Lolstead  
Christiaan A. Marcum  
Katie McElveen  
Daniel O. Myers  
Karl E. Novak  
Kimberly Keovors Palmer  
Charles W. Patrick, Jr.  
Gordon C. Rhea (CA, DC & USVI only)  
Terry E. Richardson, Jr.  
Thomas D. Rogers  
A. Hoyt Rowell, III  
Matthew J. Thiesing  
T. Christopher Tuck  
James L. Ward, Jr.  
Edward J. Westbrook  
Kenneth J. Wilson  
Robert S. Wood  
Walter McBrayer Wood

Of Counsel:  
James H. Rios, Jr.  
Howard Siegel (DC & MD only)  
David L. Suggs (MN & NY only)  
Robert M. Turkewitz

July 21, 2008

Robert Scarborough  
Sidley Austin LLP  
One South Dearborn  
Chicago, IL 60603  
tscarborough@sidley.com

Re: Outstanding discovery issues  
*Krzyzanowski v. Orkin* Case No.: C07- 05362 JL  
*Sheppard v. Orkin*, Case No.: 4:07-CV-01183-WRW

Dear Counsel:

On June 22, 23, and 28, 2008 we met and conferred on efforts regarding outstanding discovery in both the *Sheppard* and *Krzyzanowski* cases. Based on these meetings, Plaintiffs' counsel has agreed to clarify their responses to interrogatories propounded on Plaintiffs and to supplement responses to requests for production as necessary.

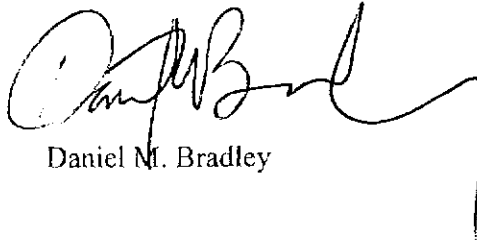
In the responses, Plaintiffs indicated that they produced all documents known to exist at this time. Plaintiffs have not intentionally withheld any documents or records. Since these responses were served, Orkin has made supplemental requests for additional documents and clarifications they believe to be responsive. The Krzyzanowskis will conduct a thorough search of their records to locate any additional documentation that may have been inadvertently omitted and are responsive to these supplemental requests.

The Krzyzanowskis will supplement their responses to the first set of interrogatories in order to clarify the answers already provided. Specifically, interrogatories 3, 5, 6, 7, 8, 10, 11, 12, 13, 15, and 16 will be supplemented.

In answering discovery requests, Mr. Sheppard will make every attempt to address the issues raised by Defendants in the *Krzyzanowski* responses to interrogatories. Mr. Sheppard further agrees to provide you with all responsive documentation in his possession that are not otherwise privileged or protected. It should be noted, that we do not foresee withholding any documents at this time.

If you have further questions or concerns at this time, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'Dan Bradley', with a long horizontal flourish extending to the right.

Daniel M. Bradley

DMB/thb

cc: Bob Davidson  
Tom Campbell

# **EXHIBIT G**

1 Mark L. Eisenhut, Bar No. 185039  
2 Matthew R. Orr, Bar No. 211097  
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29 dbrown@rumberger.com  
30 dgerber@rumberger.com

31 Attorneys for Defendants Orkin, Inc. (f/k/a Orkin  
32 Exterminating Co., Inc.), and Rollins, Inc.

33 **UNITED STATES DISTRICT COURT**  
34 **NORTHERN DISTRICT OF CALIFORNIA**

35 RONALD KRZYZANOWSKY AND  
36 ILEANA KRZYZANOWSKY, on behalf  
37 of themselves and all others similarly  
38 situated,

39 Plaintiffs,

Case No. C07-05362 SBA

1  
2 vs.

3 ORKIN EXTERMINATING COMPANY,  
4 INC.; ROLLINS, INC.,

5 Defendants.

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ORKIN, INC.'S SECOND SET OF  
INTERROGATORIES  
TO PLAINTIFF, RONALD  
KRZYZANOWSKY DATED MARCH  
7, 2008

9 Defendant, Orkin, Inc. (f/k/a Orkin Exterminating Co., Inc.) ("Orkin"), in  
10 accordance with the Rules of the Federal Rules of Civil Procedure, propounds upon the  
11 Plaintiff, Ronald Krzyzanowsky, the following interrogatories to be responded to in  
12 writing and under oath within thirty (30) days from the date of service hereof. When  
13 answering these interrogatories, please refer to the definitions and instructions attached  
14 hereto.

15  
16 **DEFINITIONS AND INSTRUCTIONS**

17 These instructions and definitions pertain to the foregoing discovery request:

18 1. The word "person(s)" means any natural person, individual, entity,  
19 including but not limited to, joint owners, companies, partnerships, joint ventures,  
20 corporations, trusts, estates, limited partnerships, associations, proprietorships, firms,  
21 other business enterprises, or government bodies.

22 2. The word "document(s)" means all written, recorded, or graphic matter,  
23 however produced or reproduced, pertaining in any manner to the subject matter  
24 indicated and including without limiting the generality of the foregoing, all originals,  
25 copies and drafts of all correspondence, office memoranda, memoranda of telephone  
26 conversations, telegrams, messages, contracts, studies, cancelled checks, graphs,  
27 photographs, releases, newspaper or magazine articles, books, financial statements,  
28 ledgers, transcripts, affidavits, tapes, tape recordings and phonograph records, whether

1 originals, and all non-identical copies, or drafts, however produced or reproduced. The  
 2 term "document(s)" also includes all information stored on any computers, hard drives,  
 3 disk drives, or other digital storage. The term "document(s)" is intended to have the  
 4 broadest possible meaning under the applicable rules of civil procedure.

5 3. "Communication" means any oral statement or writing.

6 4. As used herein, the singular and masculine form of noun or pronoun shall  
 7 embrace, and be read and applied as the plural or the feminine or neuter, as  
 8 circumstances may make appropriate.

9 5. The word "identify" when used with respect to a person means:

10 A. State the full name, present address, and telephone number of said  
 11 person; and,

12 B. State the full name, address, and telephone number of each of his /  
 13 her employers, each corporation of which he is an officer or  
 14 director, and each business in which he is a principal.

15 6. The word "identify" when used with respect to a document means:

16 A. Describe the document by date and subject matter;

17 B. Identify the person or persons that authored, wrote, signed, initialed,  
 18 dictated, or otherwise participated in the creation of the document;  
 19 and

20 C. Identify the name, address, and telephone number of the person who  
 21 has custody of the document.

22 7. Unless otherwise specified herein, the discovery requests cover the time  
 23 period from June 1, 1999 to the present.

24 8. "You," "Plaintiff," or "Plaintiffs" shall mean Ronald and Ileana  
 25 Krzyzanowsky, and all of their agents, including attorneys, investigators, contractors,  
 26 consultants, experts, and other representatives.

27 9. To the extent the Plaintiff asserts any privilege to any information  
 28 requested and refuses to provide such information based on that privilege, please

1 produce an itemized privilege log of all information withheld at the time the response to  
 2 the request is served. The log should include (1) the privilege(s) asserted, (2) a  
 3 description of the information withheld on the grounds of the privilege, (3) all authors,  
 4 (4) all recipients, and (5) the date the information was created.

## 5 6 INTERROGATORIES

### 7 INTERROGATORY 17.

8 Please identify all dates between July 2, 1999 and October 19, 2007 on which  
 9 you communicated or met with any attorney – whether or not retained and including but  
 10 not limited to your attorneys in this action – regarding Orkin's treatment of your  
 11 property. Your answer should identify the name of the attorney as well as the date of  
 12 such communication or meeting.

13  
 14 Dated: June 13, 2008

CALL, JENSEN & FERRELL  
 A Professional Corporation  
 Mark L. Eisenhut  
 Matthew R. Orr

15  
 16  
 17  
 18 By: 

Matthew R. Orr

19 Attorneys for Defendants Orkin Exterminating  
 20 Company, Inc. and Rollins, Inc.

**CERTIFICATE OF SERVICE**  
(United States District Court)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On June 13, 2008, I have served the foregoing document described as **ORKIN, INC.'S SECOND SET OF INTERROGATORIES TO PLAINTIFF, RONALD KRZYZANOWSKY DATED MARCH 7, 2008** on the following person(s) in the manner(s) indicated below:

**SEE ATTACHED SERVICE LIST**

☐ (BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing User(s) through the Court's Electronic Filing System.

☒ (BY MAIL) I am familiar with the practice of Call, Jensen & Ferrell for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call, Jensen & Ferrell, Newport Beach, California, following ordinary business practices.

☐ (BY OVERNIGHT SERVICE) I am familiar with the practice of Call, Jensen & Ferrell for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by the overnight service provider the same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by the overnight service provider with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by the overnight service provider at Call, Jensen & Ferrell, Newport Beach, California, following ordinary business practices.

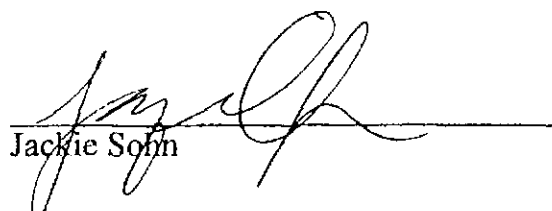
☐ (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the transmittal sheet, I transmitted from a facsimile transmission machine, which telephone number is (949) 717-3100, the document described above and a copy of this declaration to the person, and at the facsimile transmission telephone numbers, set forth herein. The above-described transmission was reported as complete and without error by a properly issued transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission.

☐ (BY E-MAIL) I transmitted the foregoing document(s) by e-mail to the addressee(s) at the e-mail address(s) indicated.

1  
2 [ ] (FEDERAL) I declare that I am a member of the Bar and a registered Filing User  
3 for this District of the United States District Court.

4 [ X ] (FEDERAL) I declare that I am employed in the office of a member of the Bar  
5 of this Court at whose direction the service was made.

6 I declare under penalty of perjury under the laws of the United States of America  
7 that the foregoing is true and correct, and that this Certificate is executed on June 13,  
8 2008, at Newport Beach, California.

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Jackie Sohn

**SERVICE LIST**

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# **EXHIBIT H**

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2 Matthew R. Orr, Bar No. 211097  
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Attorneys for Defendants Orkin, Inc. (f/k/a Orkin  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RONALD KRZYZANOWSKY AND  
ILEANA KRZYZANOWSKY, on behalf  
of themselves and all others similarly  
situated,

Plaintiffs,

Case No. C07-05362 SBA

1  
2 vs.

3 ORKIN EXTERMINATING COMPANY,  
4 INC.; ROLLINS, INC.

5 Defendants.  
6

**DEFENDANT ORKIN, INC.'S  
SECOND REQUEST FOR  
PRODUCTION OF DOCUMENTS TO  
PLAINTIFF, RONALD  
KRZYZANOWSKY DATED MARCH  
7, 2008**

7  
8 Defendant Orkin Exterminating Company, Inc. n/k/a Orkin, Inc. ("Orkin"), by and  
9 through its undersigned counsel, submits the following Request for Production of  
10 documents to Plaintiffs Ronald and Ileana Krzyzanowsky in accordance with Fed. R. Civ.  
11 Proc. 34. Please produce the documents identified below within thirty (30) days, or as  
12 otherwise agreed upon between counsel. When responding to these requests, please refer  
13 to the definitions and instructions attached hereto.  
14

15  
16 **DEFINITIONS AND INSTRUCTIONS**

17 These instructions and definitions pertain to the foregoing discovery  
18 requests:

19 The word "person(s)" means any natural person, individual, or entity, including  
20 but not limited to, joint owners, companies, partnerships, joint ventures, corporations,  
21 trusts, estates, limited partnerships, associations, proprietorships, firms, other business  
22 enterprises, or government bodies.

23 The word "document(s)" means all written, recorded, electronic, or graphic  
24 matter, however produced or reproduced, pertaining in any manner to the subject matter  
25 indicated and including without limiting the generality of the foregoing, all originals,  
26 copies, and drafts of all correspondence, office memoranda, memoranda of telephone  
27 conversations, telegrams, messages, contracts, studies, cancelled checks, graphs,  
28 photographs, releases, newspaper or magazine articles, books, financial statements,

1 ledgers, transcripts, affidavits, tapes, tape recordings and phonograph records, whether  
 2 originals or copies, and all non-identical copies, or drafts, however produced or  
 3 reproduced. The term "document(s)" also includes all information stored on any  
 4 computers, hard drives, disk drives, or other digital storage. The term "document(s)" is  
 5 intended to have the broadest possible meaning under the applicable rules of civil  
 6 procedure.

7 "Communication" means any oral statement or writing.

8 As used herein, the singular and masculine form of noun or pronoun shall  
 9 embrace, and be read and applied as the plural or the feminine or neuter, as  
 10 circumstances may make appropriate.

11 "Plaintiff" or "Plaintiffs" shall mean Ronald and Ileana Krzyzanowsky, and all of  
 12 their agents including attorneys, investigators, contractors, consultants, experts, and  
 13 other representatives.

14 To the extent Plaintiff asserts any privilege to any document requested and  
 15 refuses to produce such document based on that privilege, please produce an itemized  
 16 privilege log of all documents withheld from production at the time the response to the  
 17 request is served. The log should include (1) the privilege(s) asserted, (2) a description  
 18 of the document withheld on the grounds of the privilege, (3) the author(s) of the  
 19 document, (4) the recipient(s) of the document, and (5) the date the document was  
 20 created.

## 21 REQUESTS FOR PRODUCTION

22  
 23 21. Please produce any and all cancelled checks or bank statements reflecting  
 24 payments made to Orkin, Inc., Orkin Exterminating Co., Inc., Rollins, Inc. or any other  
 25 entity for services provided to you by Orkin, Inc., Orkin Exterminating Co., Inc., and  
 26 Rollins, Inc. in 1999, 2000, 2001, and 2002 (including but not limited to records  
 27 referred to at pages 122-134 of your deposition).

28 ///


1 22. Please produce any and all permits for remodeling or construction work  
2 that has been done on any area of your home between 1999 and 2007, as referenced at  
3 page 118 of your deposition.  
4

5 23. Please produce any and all demand letters that you made to Orkin or  
6 Rollins pursuant to the California Civil Code Section 1782 prior to filing this suit.  
7

8 24. Please produce any and all DOCUMENTS which evidence, reflect,  
9 reference, or otherwise indicate all dates between July 2, 1999 and October 19, 2007 on  
10 which you communicated or met with any attorney – whether or not retained and  
11 including but not limited to your attorneys in this action – regarding Orkin's treatment  
12 of your property.  
13

14 Dated: June 13, 2008

CALL, JENSEN & FERRELL  
A Professional Corporation  
Mark L. Eisenhut  
Matthew R. Orr

15  
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17  
18 By:   
Matthew R. Orr

19 Attorneys for Defendants Orkin Exterminating  
20 Company, Inc. and Rollins, Inc.  
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**CERTIFICATE OF SERVICE**  
(United States District Court)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On June 13, 2008, I have served the foregoing document described as **ORKIN, INC.'S SECOND SET OF REQUEST FOR PRODUCTION OF DOCUMENTS TO PLAINTIFF, RONALD KRZYZANOWSKY DATED MARCH 7, 2008** on the following person(s) in the manner(s) indicated below:

**SEE ATTACHED SERVICE LIST**

☐ (BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing User(s) through the Court's Electronic Filing System.

☒ (BY MAIL) I am familiar with the practice of Call, Jensen & Ferrell for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call, Jensen & Ferrell, Newport Beach, California, following ordinary business practices.

☐ (BY OVERNIGHT SERVICE) I am familiar with the practice of Call, Jensen & Ferrell for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by the overnight service provider the same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by the overnight service provider with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by the overnight service provider at Call, Jensen & Ferrell, Newport Beach, California, following ordinary business practices.

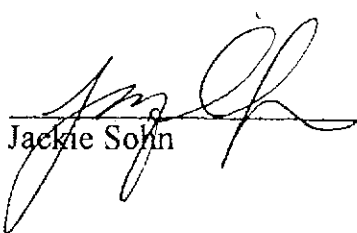
☐ (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the transmittal sheet, I transmitted from a facsimile transmission machine, which telephone number is (949) 717-3100, the document described above and a copy of this declaration to the person, and at the facsimile transmission telephone numbers, set forth herein. The above-described transmission was reported as complete and without error by a properly issued transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission.

☐ (BY E-MAIL) I transmitted the foregoing document(s) by e-mail to the addressee(s) at the e-mail address(s) indicated.

1  
2 ☐ (FEDERAL) I declare that I am a member of the Bar and a registered Filing User  
3 for this District of the United States District Court.

4 ☒ (FEDERAL) I declare that I am employed in the office of a member of the Bar  
5 of this Court at whose direction the service was made.

6 I declare under penalty of perjury under the laws of the United States of America  
7 that the foregoing is true and correct, and that this Certificate is executed on June 13,  
8 2008, at Newport Beach, California.

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Jackie Sohn

**SERVICE LIST**

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Attorneys for Defendants Orkin, Inc. (f/k/a Orkin  
Exterminating Co., Inc.), and Rollins, Inc.

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

RONALD KRZYZANOWSKI AND  
ILEANA KRZYZANOWSKI, on behalf of  
themselves and all others similarly situated,

Plaintiffs,

vs.

Case No. 3:07-cv-05362-SBA (EDL)

**[PROPOSED] ORDER GRANTING  
MOTION TO COMPEL BY  
DEFENDANTS ORKIN, INC. (f/k/a  
ORKIN EXTERMINATING CO.,  
INC.) AND ROLLINS, INC.**

1  
2 ORKIN EXTERMINATING COMPANY,  
3 INC.; ROLLINS, INC.,

4 Defendants.

**NOTICED FOR HEARING ON  
SEPTEMBER 30, 2008 AT 9:00 A.M.**

5  
6 Having considered the Motion to Compel by Defendants Orkin, Inc. (f/k/a Orkin  
7 Exterminating Co., Inc.) and Rollins, Inc., and Plaintiffs' response thereto, and having  
8 heard argument on said motion on September 30, 2008, Defendants' Motion to Compel  
9 is hereby GRANTED. Plaintiffs shall provide full and complete discovery responses  
10 on or before 15 days after entry of this order.

11  
12 Dated: \_\_\_\_\_

13 ELIZABETH D. LAPORTE  
14 United States Magistrate Judge  
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**CERTIFICATE OF SERVICE**  
(United States District Court)

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660.

On August 20, 2008, I have served the foregoing document described as **[PROPOSED] ORDER GRANTING MOTION TO COMPEL BY DEFENDANTS ORKIN, INC. (f/k/a ORKIN EXTERMINATING CO., INC.) AND ROLLINS, INC.** on the following person(s) in the manner(s) indicated below:

**SEE ATTACHED SERVICE LIST**

☒ (BY ELECTRONIC SERVICE) I am causing the document(s) to be served on the Filing User(s) through the Court's Electronic Filing System.

☐ (BY MAIL) I am familiar with the practice of Call, Jensen & Ferrell for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope, with postage fully prepaid, addressed as set forth herein, and such envelope was placed for collection and mailing at Call, Jensen & Ferrell, Newport Beach, California, following ordinary business practices.

☐ (BY OVERNIGHT SERVICE) I am familiar with the practice of Call, Jensen & Ferrell for collection and processing of correspondence for delivery by overnight courier. Correspondence so collected and processed is deposited in a box or other facility regularly maintained by the overnight service provider the same day in the ordinary course of business. On this date, a copy of said document was placed in a sealed envelope designated by the overnight service provider with delivery fees paid or provided for, addressed as set forth herein, and such envelope was placed for delivery by the overnight service provider at Call, Jensen & Ferrell, Newport Beach, California, following ordinary business practices.

☐ (BY FACSIMILE TRANSMISSION) On this date, at the time indicated on the transmittal sheet, I transmitted from a facsimile transmission machine, which telephone number is (949) 717-3100, the document described above and a copy of this declaration to the person, and at the facsimile transmission telephone numbers, set forth herein. The above-described transmission was reported as complete and without error by a properly issued transmission report issued by the facsimile transmission machine upon which the said transmission was made immediately following the transmission.

☐ (BY E-MAIL) I transmitted the foregoing document(s) by e-mail to the addressee(s) at the e-mail address(s) indicated.

1 [ X ] (FEDERAL) I declare that I am a member of the Bar and a registered Filing User  
2 for this District of the United States District Court.

3 [ ] (FEDERAL) I declare that I am employed in the office of a member of the Bar  
4 of this Court at whose direction the service was made.

5 I declare under penalty of perjury under the laws of the United States of America  
6 that the foregoing is true and correct, and that this Certificate is executed on August 20,  
2008, at Newport Beach, California.

7  
8 s/Matthew R. Orr  
Matthew R. Orr

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